

Law Reform

Why do we need Law Reform?

Law reform is the process by which the law is modified and shaped over time to better reflect the social values that society feels are important. The law cannot stand still. A major function of the legal system is to respond to changing values and concerns within society, resolve issues as they develop, overcome problems that occur in legal cases or events, promote equality and respond to scientific or technological developments. Law reform is essential if the law is to remain relevant to a changing society.

Law reform tends to be a gradual process, with widespread community consultation and involvement. Indeed, one criticism of law reform is that it is too slow. That is particularly the case with respect to technology, and advances in technology that impact on crime and criminal behaviour.

Our legal system still has many serious problems to resolve such as:

- High rate of ABTSl imprisonment
- Dealing with new forms of white-collar crime
- Organised drug trafficking/ decriminalisation of some drug offences
- Balancing the rights of victims and defendants
- Rehabilitating offenders and finding alternatives to imprisonment

The Agencies of Reform	The conditions which give rise to the need for reform
<ul style="list-style-type: none">• Law Reform Commissions• Parliament• Courts	<ul style="list-style-type: none">• Changing social values• Changing composition of society• New concepts of justice• Failure of existing law• International law• New technology

Why have special agencies been created for law reform?

- ✓ To ensure independence of governments, political parties and lobby groups
- ✓ To ensure high quality of research of the development of well respected bodies
- ✓ These bodies build up specific expertise and authority in our society

The Agencies of Reform

1. Law Reform Commissions

The two main agencies of law reform in Australia are the Commonwealth and State Law Reform Commissions. These agencies CANNOT change the law, this can only be done by the Parliaments or the courts. However, the Commonwealth and State Law Reform Commissions investigate a range of legal issues and make recommendations to the parliament.

When conducting an inquiring, the LRC aims to:

- simplify and modernise the law
- improve access to justice
- remove obsolete or unnecessary laws
- eliminate defects in the law
- suggest new or more effective methods for administering the law and dispensing justice

Major projects completed by the NSW Law Reform Commission over a number of years include a review of:

- the role of juries in sentencing
- the criminal justice system in relation to people with an intellectual disability
- expert witnesses
- sentencing
- the *Evidence Act 1995* (NSW)

A criminal law topic under review recently was the implementation of a majority verdict by juries into the NSW court system.

The process of changing law is lengthy. Overall, the NSW Law Reform Commission is a very effective tool in changing and amending our criminal laws.

(For further information on its current projects, visit the NSW Law Reform Commission website <www.lawlink.nsw.gov.au/lrc>.)

Parliaments, both state and federal, are the main law-making bodies in Australia. It is only through parliament that any recommendation by the law reform commissions can be enacted into law.

The laws that are altered or enacted by the government are usually a reflection of the political party in power. For example, conservative politicians who disapprove of same sex relationships are unlikely to be in favour of the law giving equal status to those relationships in regard to marriage, adoption and assisted reproductive technology.

2. Parliament

The legislature or parliament is the main lawmaking body. Another function is to pass amendments to existing laws. Hence, Parliament plays a very important role in reforming the law. When the Law Reform Commission makes a recommendation for reform to the Parliament, it can be enacted into legislation. Parliamentary reform of law is also a reflection of the policies held by the part in Government at the time.

Where do these changes come from?

The idea of pressure for these changes comes from many areas. As well as law reform commissions, there are many other organisations, which put forward proposals for law reform.

→ Government policies

Every government Minister has the job of introducing legislation about matters that fall within his or her portfolio.

→ Lobby Groups

Individuals cannot change the law but as members of lobby groups they can influence its reform. Lobby groups are collections of people with similar interests and with specific aims upon which they wish governments to act. Victims' lobby groups such as **Enough is Enough** have influences law reform in relations to victims of crime.

They attempt to achieve their aims by targeting:

- members of parliament
- parliamentary committees
- governmental inquiries
- the media
- the public

Lobby groups try to raise public awareness of their cause; the higher the profile of their cause the more likely it is that the government will listen to their ideas. If they can influence government decision making, then they can achieve law reform in the area in which they are interested.

→ Statutory Bodies

There are a number of statutory bodies that can also advise and inform parliament of areas that require law reform. They include the **Australian Institute of Criminology** (a Federal body) and the **Youth Advisory Council** (a State body).

→ Parliamentary committees

Every parliament has several committees to investigate matters and make suggestions for changes to the law.

→ Royal Commissions

Royal Commissions investigate a particular matter and advise on how the law in that area should be reformed.

→ **Permanent advisory bodies**

There are a number of bodies which monitor the operation of, and propose reform to the law in, a particular area. In the federal sphere these include the **Australian Institute of Criminology**. In NSW there are the **Bureau of Crime Statistics and Research** (BOCSAR), the **Anti-Discrimination Board** (ADB) and the **Youth Advisory Council** (YAC).

→ **Independent authorities**

Some independent bodies can also advise the Government about law reform. The **Independent Commission Against Corruption** (ICAC) in NSW and the federal **National Crime Authority** (NCA) regularly advise their Governments on how the law could be improved as a result of their investigations.

→ **Professional associations**

The **Law Society of New South Wales** and the **Bar Association** represent the majority of lawyers in New South Wales. These professional associations regularly suggest amendments to the laws in NSW.

3. Courts

Through judicial decisions, the Courts can shape the law and reform it. The role of the courts is to interpret the laws made by the Parliament. The rules of common law also allow judges to reform the law by setting new precedents in the cases that come before them. However, most cases are bound by set sentences and procedures and this inhibits the ability of judges to make laws. When common law is made, it is usually to accommodate a particular situation that is not covered in statute law.

More usually, however, in applying and enforcing the law as it presently exists, courts prompt consideration of change by Parliament or by regulatory bodies. Sometimes a judge or magistrate may openly recommend a change. In recent times there have been a few examples of those cases and the changes have been or could be quite significant.

Effectiveness of law reform agencies

The weakness of the law reform commissions, courts and lobby groups is that they rely on parliament either to carry out recommendations or to act upon judges' decisions. While these agencies can strongly influence law reform, ultimately it is only parliament that can make suggested changes by incorporating them into statutes. One problem that concerns all reform agencies is the delays that occur before any suggested reform of the law actually takes place, Victims' of crime lobby groups make the observation that, when reform of the criminal law is required, governments often act only when there is a political benefit to be gained.

The Conditions Which Give Rise to the Need for Reform

Changing Social Values

The values of societies change over time. This places pressure on the law to change and adapt over time. What is acceptable at one time may be considered unacceptable at another time. Similarly, the push for tougher sentencing in law reform may satisfy the retributive aspects of punishment but harsher penalties are not statistically shown to reduce crime rates. Thus in seeking to promote social values for tougher penalties it undermines our social value for fairness and the concept of justice for the individual.

Changing Composition of Society

The country is culturally diverse and socially progressive. Australians are, on the whole, tolerant and open. However, with the recent rise in global terrorism suspicions and fears have risen. Politicians have subtly manipulated the media to suggest certain types of people and religions are propagating terrorism, when in fact no religion preaches violence as a way of life. The fears have led to the passing of new Commonwealth laws on terrorism that undermine the democratic values that have been the foundation of our democracy. Thus, in seeking to preserve social values, some aspects of the values held dear have been lost.

New Concepts of Justice

As social values change, so too does our concept of justice. Drug law reform in SA and the ACT, have placed pressure on other jurisdictions to reform law relating to the possession and personal use of small quantities of 'soft' drugs. Sentencing laws are continually subject to law reform scrutiny. Areas where sentencing is currently under review in NSW relate to Indigenous offenders and corporate offences. Similarly, at the Federal level the use of periodic detention as a punishment has been questioned because of the difficulties in administering it.

Failure of Existing Law






When laws fail then they must be reformed, or revised by amendment. Occasionally, the government is discussing the law reform when it is forced by an incident. There was much debate on firearms controls when the Port Arthur massacre, initiated by Martin Bryant, took place. This hastened gun control in Australia.

International Law

When International law is reformed this can lead to changes within Australia's domestic legal regime. This is particularly true when having signed a Convention at the UN. Australia passes new domestic legislation.

New Technology

New technologies create the need for law reform. When technology is in advance of the law then it places pressure on the law to reform. For example, new mobile phone technology which allows for the taking of pictures which can be transmitted by SMS has led to calls for reform to privacy laws. New technology has also allowed for DNA testing which can assist in solving crimes. The use of such technologies can lead to criminal law reform.

Some conditions that create need for reform:	Example of response:
1. Changing social values and attitudes 	
2. Changing composition of society 	
3. Influence of International law 	
4. Changing society 	
5. New Concepts of Justice 	
6. Failure of existing law or legal system 