

LEGAL STUDIES

Family Law

Maintenance/Children Care

Child Support Assessment Act 1989→Child Support Assessment Amendment Act 2006

Removed the previously ineffective way that maintenance payments were allocated to family members. Merged maintenance with the Australian Taxation Office, this meant that payments were taken directly out of the person's income and were redistributed to the needy party. The amendment act was due to the media influence on the law in the form of the four corners report. The changes have increased the enforceability and the recognition/payments that are given and required by both parties.

Family Law Reform Act 1995

Made law regarding the dissolution of marriage and the requirements that are needed before a decree nisi and decree absolute are granted. Parents are now required to make parenting plans that will outline the financial status, custody and visiting requirements. Disputed can be resolved via the primary dispute resolution mechanisms (PDR) for example Family Court of Australia and alternative dispute resolution mechanisms such as Mediation and Counselling.

Convention on the Rights of the Child 1990

Makes specific reference to the fact that "The best interests of the child are paramount." This is considered when decisions are made through common law and is reflected in changes in statute law where the child's interests have been catered for.

Costing The Children – Four Corners Report in 2005

This was a non-legal document that was produced as changes to the legal system regarding child support were imminent. It highlighted the inefficiencies in the current method and changed society's attitudes towards the way that child support is approached. It was influential in changing attitudes of society and therefore put pressure on the legal process of reform.

Dads in Distress

Is a non-government organisation that is responsible for increasing the awareness and the recognition that is given to dads in dysfunctional families. It is a regular meeting point and a way in which dads are able to receive support for what they have gone through. It is supported by the Australian Government and is also run like a charity in support of dads.

Education Act 1990

CROC made it a legal requirement that children are educated up to the age of 15. This is known as compulsory education and is a right of all children, before 1990 Australia had no legislation specifically stating this age. This was in response to international law and reformed the way that education is viewed in response to international law.

Re Patrick

In this case a sperm donor challenged the idea that he had no legal rights towards the child that was born due to his sperm. The Family Law Act 1975 stated that he had no legal obligations/rights but it was in “the best interests” of the child to be with the donor. On these grounds the child was given to the donor.

Domestic Violence

Trish Case 2002

Trish was murdered by her estranged husband who was out on bail after Trish took an Apprehended Domestic Violence Order (ADVO) against him. Was a very public case which brought about much disgust about the way that the legal system handles domestic violence. Influences the law through the. One in every five ADVO's is broken.

Bail Act Amendment 2003

Removed the presumption of bail for those who have and ADVO against them the. Changes the way that the legal system operates in relation to domestic violence. Was an important piece of legislation that changes fundamental legal beliefs (presumption of bail) due to changing society's attitudes.

“For Trish's Sake” 2003 Daily Telegraph Article

One of many articles published at the time of the case that changed the way that society approached domestic violence. Was influential in changing society's attitudes towards the failure of existing law. The double influence helped fuel law reform.

Crimes (Sexual Assault) Amendment Act 1987 (NSW)

The attitudes towards women have changed over the past few centuries. Historically approaches such as the “Rule of Thumb” and “Unita Caro” existed which basically legalised domestic violence as long as no one in public knew about it. It was very much an issue that was dealt with indoors and condoned violence towards women. Beliefs such as “Unita Caro” made rape in marriage allowed as you were unable to rape yourself, hence no charges for rape in marriage. The act above removed the concept of Unita Caro and made rape in marriage illegal.

“Violence Against Women Australia Says No”

Is a non-legal means of influencing the legal system, it changed the way that society views domestic violence. The campaign also involved using real victims to recount their stories, this highlighted to abusers that their actions are unacceptable. The changing society's attitudes caused law reform.

R vs Kina 1998

Was a domestic violence case where Kina was acquitted of all charges after the court realised her situation. She was not previously able to tell due to her ATSI culture. She claimed battered women's syndrome and was released.

Justice Bollen 1992 SA Courts

Made a controversial statement in his ruling that men were allowed to use “Rougher than usual handling” in order to persuade their wife to have sex. This outraged the community as it goes against many people thought patterns relating to women in that they should be treated with extra respect.

Aboriginal and Torres Strait Islander Marriage

Australian Law Reform Commission 1986- Recognition of Aboriginal Customary Laws

Recommended that ATSI marriages should be given legal recognition under the law, this was because there was little legal enforceability when ATSI marriages were dissolved. The ALRC made these recommendations as it saw an area of law that is substantially lacking. No law reform has been undertaken since the recommendations were made.

Constitution Section 51

Gives the federal government the right to make all laws regarding marriage. This is the level of government that has failed to accommodate for different cultures within Australian society.

Hyde & Hyde vs Woodmansee 1866

Defines the legal definition of marriage “The Union of a man and a woman entered into voluntarily for life to the exclusion of all others.” ATSI marriages are deemed not to fit into this definition and are therefore not recognised by the law a lawful marriages.

De Facto Relationships Act 1984

Changed the definition of marriage and made ATSI marriages recognised as if they were De Facto relationships. This is problematic when the marriage is dissolved as there is limited enforceability in child support, violence and other areas.

Same Sex Relationships

Hope and Brown vs NIB Health Fund Ltd.

Changed the common law attitudes towards same sex relationships and changed the way that private health insurance is awarded. It is cheaper for couples than two singles and NIB declined the claim due to sexuality. This is not allowed and the couple were awarded couples health care.

R vs McEwen 1996

McEwen claimed that Battered Women’s Syndrome applied to same sex relationships as well as heterosexual relationships. McEwen was successful in gaining and acquittal and was released of charges. This changed the common law stance towards the way that domestic same sex relationships were resolved. Gained further equality for same sex relationships.

Property (Relationships) Amendment Act 1999

Gave same sex couple equal recognition in areas within the legal system. Formalises rights relating to wills, property division, inheritance and health care; failed to formalise the rights pertaining marriage and adoption. Recognises that the children will not be properly cared for in terms of a balances life style. Also same sex relationships don’t comply with the legal definition of marriage as stated by the case of Hyde & Hyde vs Woodmansee 1866 and the Marriage Act Amendment 2004.

De Facto Relationships Act 1984

Changes the definition of a de Facto couple to allow for changes in societies attitudes. It changed the meaning so that same sex couples were given greater recognition by the Australian legal system. Was one of the first pieces of legislation that gave legal recognition.

Lisa Meldrum Case 2000

Meldrum contested the ruling that she was not allowed assisted reproductive technology due to her sexuality. The case was contested and she was allowed IVF. This was because discrimination due to sexuality is not legally allowed. Meldrum was allowed to have IVF and conceived.

UNUDHR 1948

International law that made discrimination due to sexuality illegal. Influences domestic law in the way that it operates and the recognition that it is given to same sex couples. Countries that do not conform to the changes are given bad publicity and have poor international relations, this is not good for certain aspects of trade etc.

Veterans Affairs Amendment Act 2007

Part of the newly elected Rudd Government's way to reform the way that same sex couples are treated. This was mainly due to changing society's attitudes and the political popularity influence on the law. This changed the way that welfare payments were paid and the recognition that veterans were given in relation to welfare payments.

Australian Citizenship Act 2007

Previous to this act immigrants into Australia were treated differently if they were a same sex couple as opposed to heterosexual couples. This was again part of the Rudd government's reform to their legislation regarding same sex couples. It has improved international relations as it has brought us in line with worldwide legislation and has increased the recognition given to SS couples.

Others

Hyde & Hyde vs Woodmansee 1866

Legal definition of marriage "The union between a man and a woman to the exclusion of all others voluntarily entered into for life." This was adopted into domestic Australian legislation through the Marriage Amendment Act 2004.

Di Mento vs Visalli 1973

Italian butcher took a woman hostage and forced her to marry her. According to the definition the marriage must be entered into voluntarily. This therefore meant that the marriage was void as it didn't fulfil the legal requirements.

Technological Change

Intellectual Property

Paris Convention/ Berne Convention 1880's

Was the first recognition that was given to the protection of intellectual property. Originated within countries and the Berne convention stretched the boundaries of protection over nation states borders. Was limited protection that established BIRPI the first watchdog which has transformed into the contemporary WIPO.

BIRPI→WIPO 1967

The key point in time in the revolution from historical protection to contemporary intellectual property protection. WIPO now administers and maintains many key documents that bring consistence to IP protection.

Ralph Sarich- Orbital Motor

Developed the orbital motor and patented it through IP Australia. Because the legal monopoly was successfully maintained and the orbital motor could not be developed by any other manufacturer he sold his invention. BHP Billiton bought Sarich out and he now operates a one billion dollar empire.

USA Free Trade Agreement/Free Trade Provisions Act 1994

USA had different law that Australia pertaining to copyright and the length of time in which copyright exists. If the trade barriers were to be removed USA wanted to ensure that they were not going to be disadvantaged by inconsistent laws. USA made requirements which were enacted into domestic legislation and now both countries benefit from increased trade flows.

UNUDHR 1948/ICCPR 1966

States that the owner of IP is entitled to the legal monopoly over an invention or an idea. Is the basis for all IP laws so that the owner of the IP is protected and able to gain financial benefits for his/her original thoughts ideas ect.

ATSI/Indigenous IP

Mali Rice/ GRR Fund

The people of Mali were aware of the medicinal benefits associated with a certain strain of rice. These benefits were manipulated by the natives over hundreds of years. The Californian University made use of this rice and due to the Traditional Knowledge were required to pay the Mali people for their knowledge. Because the GRR Fund was set up cooperatively there success is evident.

Milpurru vs Indofurn 1996

“Carpet Case” was a pivotal occurrence where ATSI artworks were manufactured into carpets without the prior permission of the ATSI people. The Perth based company manufactured carpets in Vietnam which were imported without the knowledge of the authors. The Milpurru people were given compensation but meanwhile three claimants had died and the company filed for bankruptcy.

“Our Culture Our Future” 1998, Terri Janke

A report which followed the result of the carpet case after the inefficiencies of the legal system in dealing with ATSI IP protection were noticed in the carpet case. It made recommendations on future protection of rights. They have since been disregarded.

Patents Act 1990/Plant Breeders Act 1994

They changed patent protection from the Copyright Act 1968 to new legislation, they made particular allowances for individuals and firms that wished to take out a patent but make no allowance for society, this means that there is limited protection that is offered to ATSI communities.

Biotechnology

Baby Manji Yamada at the Indian Supreme Court 2008

Court case where Baby Manji was conceived artificially by a mother and father of Japanese descent to an Indian surrogate mother. The Japanese parents no longer wanted the child, The court case was to determine where the child should stay and who should have custody. The biological mother gained custody of the child

Assisted Reproductive Technology (Bill and Rules) Amendment 2008

Was the Japanese government's response to the case of Baby Manji Yamada. It essentially legalised commercial surrogacy in India. It outlined the requirements of surrogacy and made laws pertaining to the requirements of a surrogacy.

Prohibition of Human Cloning Act 2002

Prevented surrogacy and other forms of cloning and biological research into humans it prevented all forms of commercial surrogacy and unethical approaches towards human cloning. Replaced the superseded Human Tissues Act which was not up to date with the latest technologies relating to biotechnology.

NSW Law Reform Commission 1988

Made recommendations that commercial surrogacy be banned in NSW and that surrogacy in general be discouraged by the law. Since the ALRC made these recommendations the NSW law has not been adapted.

Ineffective in enforcing changes in the law as there is no jurisdiction or enforceability.

CROC 1990/UNUDHR 1948/Lack of Specifics.

The lack of guidance from international law is the source of the inconsistencies in domestic law. The inconsistency impacts of domestic law as there is no standards that are clearly outlined and need to be upheld. The only brief mentions of surrogacy are CROC and UNUDHR which state that it is a right to know ones biological parents.

Australian Jewish Society of Australia

The Jewish Culture basis many of its ethical teachings around honouring ones mother and father. The raise in the popularity of surrogacy and the potential for commercial surrogacy has become apparent which has come under much criticism due to the ethical beliefs of the Jewish people. This is apparent in the opposition that the Jewish Society of Australia has had upon impacting society's values and ethics.

Lisa Meldrum Case 2000

Meldrum contested the ruling that she was not allowed assisted reproductive technology due to her sexuality. The case was contested and she was allowed IVF. This was because discrimination due to sexuality is not legally allowed. Meldrum was allowed to have IVF and conceived.

Re Evelyn 1998

Privacy

Workplace Surveillance Act 2005

The idea of video surveillance has made it possible for employers who suspect employees of theft to video tape them and confirm their suspicions. This could have been done without their knowledge prior to the act above. This Act has made it illegal to video people without their prior permission or the permission of the courts.

Privacy Act 1988

Has increased the rights of the individual in a community where by ones rights are often unclear when it comes to privacy and what they are actually entitled to. It makes specific reference to the rights in terms of commercial databases, the use of DNA and health care information which is confidential.

Wee Waa 2000

The 500 males in Wee Waa were all asked for finger prints, photos and DNA samples following a crime against an elderly woman. Of the 500 420 gave samples whilst the others were facing serious pressure from the community to give samples. This can be seen to have somewhat invaded the privacy of the people as they weren't given a choice whether they gave samples.

Preserving Privacy in a Rapidly Changing Environment 2000

Published in response to the Wee Waa case 2000 and highlighted how people are rapidly losing a sense of their privacy. It outlined the problems associated with the Wee Waa case and how that one's rights need to be protected.

2009 International Conference on Cross Border Data Flows and Privacy.

Is an agreement that is bringing consistency to the laws and regulations concerning data flows. It was an agreement that was made between two of the world's superpowers, The USA and the EU, it regulates the way that data flows occur and the privacy of people's information when passing between countries.