

LEGAL STUDIES

Problems within family relationships & remedies

A number of problems exist within family relationships. These include spousal violence, violence involving children, sexual assault, child abuse and neglect and uncontrollable children. All aspects have been recognised by society and the law and measures have been put in place to address these issues. As with all legal responses to problems, some measures are more effective than others and there are always areas of the law that can be reformed to be more effective.

Spousal violence is a form of domestic violence between spouses only where one partner uses their control and power to physically, verbally, emotionally, psychologically, financially or socially abuse, or threaten to abuse, the other partner.

Spousal violence is caused by a number of social and psychological problems. A violent upbringing that treated this violent and abusive behaviour as normal is one of the major causes of spousal violence. If people grew up seeing this behaviour used to solve problems, they are likely to use the behaviours also as they would accept it as somewhat normal. Social pressures such as financial problems, substance abuse, stress, work and household pressures and communication breakdowns are also common causes of spousal violence.

The current Australian legal system has a number of responses to this problem, all varying in effectiveness. Legislation has been the most common and most effective way to deal with this problem within families. The “Family Law Act” 1975 was one of the first steps to respond to this problem, allowing the family court to grant injunctions to protect people and families. At first this legislation was limited in its effectiveness as it applied only to married couples, and left no protection for people in de-facto relationships. This hurdle was overcome in 1984 with the “Property (relationships) Act (NSW), allowing the family court to grant injunctions for de-facto couples also.

Injunctions were effective for responding to spousal violence in the case re “Marriage of O’Dea” 1980. O’Dea’s husband was abusive and an alcoholic so O’Dea applied for an injunction to keep her husband from entering their house, to prevent further abuse. Her application was successful, with the court granting her sole use of their matrimonial home.

The “Crimes (Domestic Violence) Amendment Act (NSW) 1982 was also significant as it asserted the criminal nature of spousal violence and introduced Apprehended Domestic Violence Orders (ADVO’s). These court orders could restrict behaviours of partners in relationships, and if these ADVO’s were breached, criminal charges could then be laid. Recent reports have found that the majority (approx. 70%) of ADVO’s are very effective at protecting the applicant from further violent acts as they are never breached.

Spousal violence remains somewhat of a problem in society so legal reforms are needed to address the problem further. The biggest problem with spousal violence is that people regard it as a “private matter” and tend to not get involved or report the problem. The legal system needs to change society’s attitudes regarding the issue, using education programs to encourage more reporting of the issue. Another issue for reform in this area is more encouragement for men and children to report spousal violence. The media currently promotes the problem of spousal violence for women and provides them with numerous support agencies, but currently there is little of a similar nature for men. It is important that this issue is seen as a problem for men, just as much as it is a problem for women. This would create better equality under the law and hopefully improve the problem of spousal violence within families.

Violence involving children is another problem experienced within families. It is a category of domestic violence where children or young people are involved, either as the victim of the violence, or as the one carrying out the violence.

Violence against children is usually caused by their parents or other close family members and may be caused by bad parental attitudes such as inability to cope with stress and anger, as well as parent's agitation of their children's social problems, learning or academic problems or behavioural problems. It may also be caused by mental illnesses or substance abuse.

Violence by children is usually due to a poor upbringing where they had little education of right and wrong behaviours and/or little emotional support. It may also be caused due to the child's inability to properly cope with social difficulties.

Legislation is the most effective way that this problem is dealt with by the Australian legal system. The "Children and Young Persons (Care and Protection) Act" 1998 (NSW) deals with violence by and against children, defining the ages of children and young people for their courtroom dealings, as well as outlining the people with a duty of care towards the children.

People with a duty of care, including teachers, doctors and sport trainers, must notify DOCS if they have reasonable grounds to suspect violence against children. This act also places an emphasis on alternative dispute resolutions for children and young people. This is very effective as it changes the children and young people's attitudes and prevents re-offending in most cases. It is also effective in that it addresses the differences between adults and children, and treats them differently accordingly.

The "Children Criminal Proceedings Act 1987 NSW) and the "Young Offenders Act" 1997 (NSW) are also very effective for reducing violence by children.

DOCS are also used to respond to violence against children. They can remove at-risk children from their parents and place them in alternative care. While in some cases this is necessary and has a positive outcome for the children, in most cases DOCS are criticised for removing children without first assessing if there is an actual risk for the children. In other cases though, DOCS is criticised for acting too late, as in the 2009 case of the child at Hawks Nest, who was allegedly starved to death by her parents.

To address this issue more effectively, the legal system needs to increase education for children and young people of the effects of violence they may cause, and also how to react to violence against them. This would include more encouragement of children to report issues, convincing them that violence is not acceptable and informing them of support agencies available to them.

Another problem that occurs within families is sexual assault. Sexual assault is a lack of consent from one member of a family or relationship, regarding sexual intercourse or other unwanted sexual behaviours such as language and/or touching.

Common causes of this problem include a poor upbringing where respectful behaviours were not taught, social problems, sexual frustration, substance abuse and feelings of supremacy or superiority, making offenders believe they have the right to treat other people however they like.

As with all other problems within family relationships, legislation is the most commonly used and most effective response to the problem.

The "Crimes (Sexual assault) Amendment Act" 1981 introduced a number of reforms relating to rape and sexual assault, outlawing rape in marriages. The "Crimes (Domestic Violence) Amendment Act" 1982 asserted the criminal nature of sexual assault and removed the defence of marriage in sexual assault cases. The effectiveness of both these pieces of legislation was proved in the 1992 case of "R v. Johns".

The husband had sexually assaulted his wife and the court asserted that "rape" did exist in marriages and was illegal. The judge stated and confirmed that a husband had no special conjugal rights.

Along with legislation, support groups are also available to provide both legal and social support for victims of sexual assault. The NSW education Centre against violence and the NSW Rape crisis centre are both available to victims of sexual assault. The NSW Rape crisis centre is a 24 hour telephone and online, crisis, support and referral service for anyone that has experienced, or fears they may experience sexual assault.

Sexual assault is still a problem and in many cases goes un-reported or unresolved. One recommendation to respond more effectively to the problem of sexual assault is greater education for children on how to respond to the issue, as well as more education and training for police, lawyers and judges on how to deal with victims more compassionately and quickly. Police, judges and lawyers also need training on how to respond to different groups of people such as indigenous victims or young children. Law reform to incorporate this change would make the legal response to sexual assault more effective as more victims would be properly cared for, creating greater equality within society.

Another area of reform needed may be harsher punishments for offenders. Currently the “periodic detention of prisoners (Domestic violence) Act” 1982 allows sexual assault offenders to work during the week and serve their punishment in detention on weekends only. While this does enable victims to still support their families, it is not sending the message to society that sexual assault is being treated as a very serious issue. Harsher punishments may help to deter more people from committing the crime, and help to reinforce the seriousness of the crime within society.

There are a number of problems that can occur within family relationships including spousal violence, violence involving children and sexual assault. All these problems are caused by a range of social and psychological factors, and as with all issues, there are a number of legal responses with varying effectiveness to address the issues. There are also areas of all issues that need further legal reform and attention to benefit a greater number of people and be seen as an effective legal response.