LEGAL STUDIES: *FAMILY LAW*

Evaluate the effectiveness of changes to family law as a response to changing values in the community.

Law reform is required to update the law to reflect changing societal values, and the values of the international community, which are reflected through international conventions. However the notoriously slow process of law reform impedes on its effectiveness. The criteria to assess the effectiveness of family law as a response to changing values in the community include protection, access, equality, resource efficiency, and the protection and recognition of the rights of the child and family members.

As a response to societal values that women should be allowed to leave a relationship, the obsolete law of the Matrimonial Causes Act was repealed, and the Family Law Act 1975 (Cwth) was introduced with the concept of "no fault" divorce. This was effective in providing equality and increased accessibility to divorce services.

In response to societal values, the changing composition of society and the NSW Law Reform Commission's Report on De Facto Relationships, the De Facto Relationships Act 1984 was enacted, effective in providing protection, recognition and access to various services such as property division in the Supreme Court. Furthermore the recent introduction of the Family Law Amendment (de facto financial measures and other matters) Act 2008 (Cwth) was effective in providing equitable property division. As seen in the case of Brown v Brown 2011 property division takes into account financial, non financial and future needs, which is reflective of social views that de facto relationships involve a long term commitment. As of 2010 de facto relationships consisted of 1/3 of Australian family units.

Law Reform Commissions are effective in elevating an issue to the awareness of the public and thus parliament. Despite Law Reform Commission reports usually never being adopted as a whole and they are merely recommendations with no legal weight, 75% of LRC recommendations are adopted by government demonstrating its effectiveness.

In response to the changing societal values of the international community, Australia became a signatory to the Convention on the Rights of the Child 1990. This effectively elevated the best interests of the child as the paramount consideration of all family law matters, therefore protecting children's rights. The case of In the matter of B and B 1997 reiterated what constituted the best interests of the child. The Family Law Amendment (Shared Parental Responsibility) Act 2006 (SPR), was effective in responding to changing social values in CROC through the recognition that for the best development of the child a "meaningful relationship with each parent" is required, as outlined in the case of Mazorski v Albright 2007. However, according to the Child Death Annual Report four out of five children known to the government who died in 2010 from suspicious injuries, including assault, were indigenous. Evident is the ineffectiveness of law reform in protecting children from harm and enforcing domestic violence legislation.

Furthermore, the ratification of the Convention Elimination Discrimination against Women, which Australia became a signatory to in 1983, led to greater protection of women in domestic violence cases and its principles were codified into the Sex-Discrimination Act 1984. Battered women's syndrome was accepted as a legitimate defence to the complete defence of self defence and the partial defence of provocation as seen in the case of R v Kina 1993, reflecting moral and ethical community standards. Despite this, as stated in the SMH article "Step up to Save Women" (Jan 2012), the Women's Refugee Movement said that all of their refuges and safe houses were full over holiday periods, and more than half of the women and children who sought help were being turned away. Evident is the ineffectiveness in protecting the rights of the child and women due to lack of service provision and access.

In response to changing social values and composition of society, the Property (Relationships) Legislation Amendment Act 1999 was enacted, increasing the recognition of same sex relationships and facilitating increased accessibility and rights in the areas of wills, property division and inheritance. The recognition of same sex couples in the area of health care was demonstrated in the case of Hope and Brown v NIB Health Fund 1994, which gave recognition by bestowing rights. However the definition of marriage as outlined in the case of Hyde v Hyde and Woodmansee and the Marriage Act 2004, remains unreflective on societies progressive views, and has resulting in the languishing rights of same sex couples. In a 2012 poll by the Australian Marriage Equality Lobby Group, 62% of people said they were in favour of amendments to the Marriage Act.

Due to changing values of parental responsibility the Child Support Scheme was established under the Child Support Assessment Act 2006 (Cwth). This was effective in increasing compliance of child maintenance from 30% to 70% and therefore increased protection to children and the spouses of non-compliant spouses. In the case of W v G 1994, a same sex partner was required to pay child maintenance for their two children born via artificial insemination; this was effective in providing equality. Furthermore, the Family Law Reform Act 1995 was effective in providing an alternative to expensive and time consuming court, through the emphasis on alternative dispute resolution. Family Relationship Centres (FRC) were established following the SPR Act, increasing access to counselling and mediation services.

However, there is still a lack of culturally appropriate FRC services for Indigenous Australians, resulting in inequality and ultimately leading to court proceedings, compounding delays and increasing expense. Law reform has faltered also as Aboriginal customary marriages are still not afforded legal status.

In essence, constant law reform is required to reflect changing societal values. These include international community values, which are reflected through international treaties. However the notoriously slow process of law reform impedes on this occurring, as in the case of marriage equality of same sex relationships and Aboriginal customary marriages.