

Family law

The nature of family law

- Involves the states attempting to set the standard for and regulate the behaviour of people' intimate and familial relationships
- Public regulation of private places and relationships
- Family is often viewed as a private entity
- Strike an appropriate balance between respecting family units and public interventions/expectations of how that unit can function
- The state regulates through legislation and courts such as:
 - Providing formal recognition and rights to persons in intimate relationships including marriage and de facto
 - Providing a process for the formal dissolution of a relationship and the equitable division of assets and orders relating to the care of any children
 - Providing formal recognitions and rights and responsibilities for parents of children biological or not
 - Setting baseline standards for the nature of care of a young person and empowering courts with jurisdiction to make orders to ensure the protection of children
 - Setting baseline standards for how families are required to behave and empowering courts to make orders to protect individuals from unacceptable behaviour
 - Regulating the way tech is used to facilitate the conception and birth of a child and the ethics surrounding it
- Policies seek to support family stability, facilitate positive functioning, enhance their safety and security and generally promote the well-being of family members
- Family law involves a mix of social, economic, educational, employment, housing and health policies, along with a range of other priorities → excerpt from "weaving a common narrative: an introduction to essays on families, policy and the law in Australia" by Alan Hayes and Daryl Higgins

The concept of family law

Difficulties in defining "family" and the changing concepts of family

- When the constitution was first drafted :family: was based on the assumption of marriage or a blood relation/shared Genealogy is the fundamental basis for a family unit
- This became to be known as a "nuclear family" → a mother and father who were married in an exclusive hetero relationship with 2.3 children who were biological to them
- A nuclear family is no longer the basis for a "family"
- ABS definition of a family "two or more persons, one of whom is at least 15 years of age, who are related by blood, marriage (registered or de facto), adoption, step or fostering, and who are usually resident in the same household."
- AIFS definition " the concept of 'family' is dynamic and often involves the transition into different family forms over time. For example, trends in divorce and remarriage have contributed to increasing numbers of one-parent, step and blended families."
- Main legislation:
 - The Marriage Amendment Act 2017 (Cth) → allowing same-sex couples the right to marry
 - Family Law Act 1975 (Cth) → Sets out the legal duties and obligations that marriage creates. The principal aim of this act was to reform the law governing the dissolution (end) of a marriage. In the past, only state 2 parliaments could pass legislation about de facto relationships. However, most state governments have not referred their powers to the Commonwealth with

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