



Ethics and the law

Professionals make complex decisions on an ongoing basis. Laws, policies and codes of ethics are put in place to guide and protect professionals—but there are multiple examples throughout the professions where what is right is still not easy to decide.

Those in the medical profession grapple with issues such as euthanasia and abortion where the law may be counter to what they feel is in the best interest of a patient (Davis & Kodish, 2014), and disability workers may be guided by laws which impinge on client autonomy (Mainzer & Dipeolu, 2015–2016). In such situations there is a tension between what is legal and what is ethical and the professional must make judgements. It is therefore useful to examine the relationship between the law and ethics.

Both the law (legal statutes) and ethics (often expressed in professional codes of ethics and conduct) are living representations of human attempts to put moral codes and guidelines into action. Both can, and should, evolve as societies do. Preston (2001), reminds us of people such as Nelson Mandela and Martin Luther King who have changed national laws through radical action against discrimination. Professional codes too should evolve to reflect legal and societal conditions. Preston goes so far as to say there

is a moral duty not to comply with unjust laws. In Australian public debate there is currently challenge to laws governing refugees and immigration, and the rights of homosexual people to marry. Examination of such debates through the lens of ethics reveals that the conversation is about such ethical principles as fairness, justice, human rights, respect, power, autonomy, participation and preventing harm (non-maleficence), for example Farrell, 2016; Newman and Pollnitz, 2005. Something may be legal, but not ethical; or ethical, but not within the law.

Preston (2001) further explains that laws have a foundation in ethics, but ethics are not necessarily based on law; the reasons for laws are overwhelmingly ethical; law is the public expression of the morality of a given society; and that law should be continually subject to scrutiny and ethical critique.

Codes of ethics guide, but do not tell us what to do. In a review of codes of ethics and conduct for teachers in Australia, Forster (2012) explained that the codes position teachers as professionals, moral agents and public servants. They can be regulatory (employer codes of conduct that can carry sanctions for breaches), or aspirational (this is what we want to be like and what good members of our profession are like), like the *Early Childhood Australia Code of Ethics* (2016). The ECA code does not tell us exactly what to do, but what members of our profession think we *should* be like. As such, it is incumbent on us to think critically about actions that have ethical implications. This can involve almost whatever we do each day and Moss (2006) has pointed out in talking about the ‘ethics of encounter’ that we can accept (or even

worse never think about) the status quo, or critically question to reveal the ethical implications for everyone.

Approaches to guiding reflection on the ethical and legal implications of a situation have been proposed. Newman and Pollnitz (2002; 2005) introduced the *Ethical Response Cycle* which provides a systematic process for reflecting and taking action during ethical dilemmas. More recently, Farrell (2016) has proposed three key aspects to consider to guide ethical practice: the ethics of participation; the ethics of power; and the ethics of partnership. Ethical principles such as autonomy—the right to be self-determining while at the same time not impinging on the rights of others; beneficence—creating benefit or good; non-maleficence—avoiding harm; justice; truthfulness; informed consent; rights and agency, etc. underpin such approaches.

As we consider these issues it is useful to move our thoughts to current situations and matters. Farrell (2016) reminds us of the ethical underpinnings of the *National Quality Standard (NQS)* guiding principles of the rights and interests of each child, children as competent and capable learners, equity, inclusion and diversity, valuing of Aboriginal and Torres Strait Islander cultures, respect for parents and families, and best practice in service provision. Where might these principles come into tension with legal parameters?

For example, thinking of the ethics of participation ...

- Are there rules, regulations or policies that make it hard for educators to allow children to be fully competent and capable learners (e.g. safety regulations that guide the avoidance of risk)?
- Does your service have policies which may exclude some children from participating (e.g. for children with disabilities in excursions) because of concerns about how you may enable their participation?
- Are all children fully included or does shortage of places mean that you must turn people away?

For example, thinking of the ethics of power ...

- Do you have rules about how long children can engage in activities, or times of routines such as meal and snack times (e.g. when thinking about safety or staffing regulations)?
- Do your staffing provisions and qualification levels allow you to maintain excellence in all areas of service provision?

If you are hesitating on responses to any of the questions above, it may be time to brush up on your ethical awareness, so that you can take an ethical stand in advocating or acting on behalf of children, families and your fellow professionals.

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References

- Davis, D., & Kodish, E. (2014). Laws that conflict with the ethics of medicine: What should doctors do? *Hastings Center Report*, 44(6), 11–14. doi: 10.1002/hast.382
- Early Childhood Australia (ECA). (2016). *Code of Ethics*. Canberra, ACT: ECA.
- Farrell, A. (2016). Ethical responsibilities in early childhood education and care. In J. Ailwood, W. Boyd & M. Theobald (Eds.), *Understanding early childhood education and care in Australia* (pp. 187–207). Sydney, NSW: Allen & Unwin.
- Forster, D. J. (2012). Codes of ethics in Australian education: Towards a national perspective. *Australian Journal of Teacher Education*, 37(9). <http://dx.doi.org/10.14221/ajte.2012v37n9>.
- Mainzer, E., & Dipeolu, A. (2015–2016). Doing right by those we serve: Law, ethics and career services for individuals with disabilities. *Career Planning and Adult Development Journal*, Winter, 131–142.
- Moss, P. (2006). Early childhood institutions as loci of ethical and political practice. *International Journal of Educational Policy, Research, & Practice: Reconceptualizing Childhood Studies*, 7, 127–137.

Newman, L., & Pollnitz, L. (2002). Responding ethically to problematic situations: Introducing the Ethical Response Cycle. *Research in Practice Series*. Canberra, ACT: Australian Early Childhood Association.

Newman, L., & Pollnitz, L. (2005). *Working with children and families: Professional, ethical and legal issues*. Frenchs Forest, NSW: Pearson Education Australia.


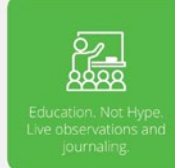
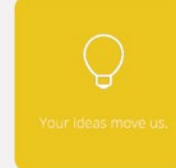

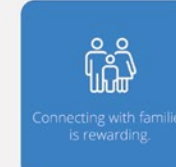



Preston, N. (2001). *Understanding ethics* (2nd ed.). Sydney, NSW: The Federation Press.

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Designed especially for early childhood education and care environments, and based on the principles of the United Nations *Convention on the Rights of the Child*, this *Code of Ethics* has followed a national process of consultation, with the emerging standards indicative of the values we share as early childhood professionals in Australia.



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