

The Callover

Episode **Insights into the Queensland Law Reform Commission with Chair Fleur Kingham**

Guest The Honourable Fleur Kingham



Georgia Athanasellis:

Welcome to The Callover, a Queensland Law Society podcast that hopes to inspire a future of connected, capable and healthy lawyers.

Acknowledgment of country

Welcome to this episode of The Callover. I'm George Athanasellis and today I have the pleasure of speaking with the Chair of the Queensland Law Reform Commission, Fleur Kingham. Chair Kingham's extensive contributions to the legal community in Queensland are quite remarkable. I think it is fair to say that since graduating from law at the University of Queensland in 1982, Chair Kingham has worn many hats.

Georgia Athanasellis:

She was the founding member of the Women's Legal Service in Queensland and the Arts Law Centre of Queensland. She's been a barrister, university lecturer, mediator, and facilitator, the first Deputy President of the Queensland Civil and Administrative Tribunal, a judge of the Queensland District Court, the Children's Court of Queensland and the Planning and Environment Court, and the President of the Land Court. And most recently in April 2023, she was appointed chair of the Queensland Law Reform Commission. I'm delighted that she has agreed to join me today to discuss her life in the law and the work of the Commission. Chair Kingham, welcome to The Callover.

Chair Kingham:

Thank you. Thank you very much for that generous introduction.

Georgia Athanasellis:

Before we discuss your work on the Law Reform Commission, I'd like to discuss a couple of other aspects of your career and to start with, what drew you to the law.

Chair Kingham:

A sense of injustice as it applied to me as a teenager, really. I found I was a very argumentative girl at school, not a terribly good student and a teacher in about grade ten, I think said to me, "well, you're so good at arguing, why didn't you be a lawyer? You get paid for it. And I thought, well, that's not a bad idea. So really, it was that I was somebody who saw injustice, usually as it pertained to myself, but also as it pertained to others. And I was just drawn to that, the notion that if you saw something that wasn't right, you might try and do something to fix it.

Georgia Athanasellis:

And over the course of your career, I think you've done that in many ways. But - and partly that's because you've worked in so many interesting and varied roles. When you first became a lawyer, did you have a clear plan about what a life in the law might look like?

Chair Kingham:

None. And my number one advice to my associates has always been, don't plan too far ahead. I did study with people who had a CV written in advance, and I think that that could well lead to frustration and disappointment.

And you miss the opportunities that would otherwise come your way if you're so focused on a particular path. I think that I've had a diverse career because I have been able to meander a little, and some of that meandering has been because of my desire to have children as well, so that at each point that I decided another child was coming or they decided they were coming, I, I took stock of what I was doing and allowed space for other opportunities to arise. And I just feel incredibly fortunate that it's worked out that way.

Georgia Athanasellis:

And you've worked across criminal law and planning and environment law. At first blush, they don't merge very easily. How did you find yourself in that position?

Chair Kingham:

Well, because I was appointed to the District Court essentially. My criminal law experience had been quite limited. I was an associate to a Supreme Court judge, to John Mccrossan, and a lot of the work that he did in the year I was with him was criminal. So, I had an idea of criminal practice as it applied in 1984 when I was an associate.

And I did a period as a solicitor where maybe a third of my work was criminal defence work. But it's fair to say it was not my strength or specialty. When I was appointed to the District Court, I'd spent six years on a tribunal that had planning well, mining and environmental and land related jurisdiction. So, I was on a steep learning curve.

But I found I got strong support from both my colleagues and the criminal bar. The discipline of law is constant, you know, across all the areas of specialty. The only area I think I found challenging, and I really put a lot of work into getting on top of was refreshing myself on the rules of evidence because frankly, it's only in the criminal courts that the rules of evidence matter and then they matter a lot.

Georgia Athanasellis:

Yes. And I was going to ask, how did you find working in such varied jurisdictions? But I suppose on that, did you have a favourite jurisdiction to sit as a Judge on?

Chair Kingham:

I suppose I would have to say that the mining environment jurisdiction is it's the area I chose to specialise in as a practitioner, so I was delighted to be able to loop back to it and now to be involved in the Law Reform Commission and review of that process. But I loved sitting as a criminal Judge, not so much because of the subject matter of many of the cases that came before the Court, but because of the hard-working men and women in that jurisdiction across the board, prosecutors, defence counsel, Judges, everyone works very hard to make a difficult system under a great deal of pressure work as well as it can. And so, I and I missed I missed juries. Frankly, I became a huge jury fan.

Georgia Athanasellis:

It's always interesting to see how a jury responds to a case. Now, I understand that in 1984, you were the founding member of the Women's Legal Service in Queensland. How did you get involved with creating that body at the time?

Chair Kingham:

Well, I want to put to bed any notion that I was a driving force. I was one of the people who came along with. There was a group of women and I want to do a shout out here from my good friend Zoe Rathus, who was very involved as a young lawyer. She was already working as an article clerk at the time, but there was a group of women who did a lot of work in family law and women who were in refuges, working in women's refuges, who saw that there was a gap in those legal advice for women who were in crisis. It was those women who really drove the creation of the legal

Centre. I got involved partly through my connection then with the student's union, which we were looking for sources of support and funding. So, I think I was seen as a good sponsor in that regard, in that respect. Family law is not an area that I have practiced in extensively. I did do a few years again as a solicitor, but I was one of a huge band of young, largely, but not only women, solicitors and barristers who gave their time on a Thursday night to do advice sessions in the front veranda of a refuge in Brisbane.

That's where it started. And now it's the most wonderful, wonderful, well-established, professional and I think quite secure community legal Centre.

Georgia Athanasellis:

And for those who don't know what the work of the Women's Legal Service is nowadays.

Chair Kingham:

Well, it's primarily focused, of course, on women and children, and it is assisting those who are seeking advice about leaving relationships, not always in circumstances of distress or abuse, but often, often they are. So domestic violence, I would say, and issues of coercive control have been at the heart of the advocacy work that the Women's Legal Service has been doing over the last few years. But it's been much broader sexual offending and the whole range of issues that affect women in the law, primarily from a criminal or a family context.

Georgia Athanasellis:

In 1991, you became the founding president of the Arts Law Centre of Queensland. What is the Arts Law Centre and what did they do?

Chair Kingham:

The Queensland chapter, I guess we were an independent group, but it was, we modelled ourselves on the Arts Law Centre of New South Wales and again it was a connection between me and people who were involved in the arts. And the idea came from artists collectives who were looking for both legal and financial advice and couldn't afford it.

So, we established the Arts Law Centre to fill that gap. And I'm sad to say it was about I think it might be as long ago as seven years or so that it completely lost funding. And I still harbour a hope that somebody can revive it because it does play an important role, I think, for struggling artists dealing with matters of contracts, understand copyright law and their rights, their business planning, that kind of work.

Georgia Athanasellis:

Well, I suppose given that it's no longer in effect more broadly, why is it important that we as a profession and maybe community support the arts in any way we can.

Chair Kingham:

Because it's our soul. I think it's as simple as that. And I also I'm a strong believer and in in the creative process, illuminating some of the big things that we must deal with as society and as lawyers. So, storytelling, the narrative can give you an insight into a large social issue. And I come from an artistic background.

So, my, my family, we're all performers are a bit disappointed. I went into the law. So, I have a natural affinity to the arts community, but I do think it's essential.

Georgia Athanasellis:

Well, let's hope someone can re-enliven the arts law centre.

Chair Kingham:

Somebody out there listening to this. Let's get it going.

Georgia Athanasellis:

Yes, please. If you if you can, that'd be wonderful. If we can turn now to the commission, what is the Queensland Law Reform Commission and what role does it play in society?

Chair Kingham:

The Law Reform Commission is now got a bit of age about it. It's more than 50 years old. It was established in 1968. There are commissions like this throughout Australia. In Queensland we're an independent statutory authority and the role of the Commission is to contribute to, you know, a modern just equitable, efficient, well-functioning legal system. We comprise - there's the Commission and the Secretariat.

So, the Commission is drawn from the judiciary, academia, the profession, and they are chosen because of their expertise and in legal matters. And then we are supported by a secretariat of professional legal researchers, some of whom are there permanently. Others come and go as far as our reviews require. So, the work we do comes from government.

We're not a law reform body at large. We can't just wake up in the morning and think, we need to fix up this area of the law, although we may well suggest that to the government. But really, we are an independent agency established to assist government in its law reform agenda.

Georgia Athanasellis:

How does the government go about asking the Law Reform Commission to investigate something?

Chair Kingham:

It's very simple. They will provide terms of reference. The terms of reference are like a guidepost, like, here's the problem. These are the things that you want to think about, and we want you to think about. This is what we want you to give us at the end of the day. So, it might be the end of the day.

We want you to provide us a report with recommendations, or it might be we want you to draft legislation to give effect to your recommendations. The terms of reference are usually developed collaboratively by government. The Law Reform Commission will usually have some input into the terms of reference really to ensure that it picks up the things that the Commission considers at a preliminary stage. It might need to look at. But really the content, the subject matter, the nature of the task, that's all developed by government in consultation with the stakeholders who are affected by that law.

Georgia Athanasellis:

And you were appointed as the Chair last year. What is the role of Chair entail?

Chair Kingham:

Well, I suppose you're the strategic leader. I'm the Chair of the commission. So, the group of commissioners. I have the delightful, I suppose, freedom of not having the administrative responsibilities that come with governing the secretariat. That's down to our excellent executive director, Matt Corrigan. So, he has the responsibility for all the employment and industrial and government and procurement and financial.

All of that and we work closely together. But my role is more strategic and for the, the intellectual input from the commissioners themselves to guide the work that is done by the Secretariat to support the Commissioner and the commissioners in making their final recommendations.

Georgia Athanasellis:

And I understand the Queensland Government has asked the Commission to examine and make recommendations into criminal defences. Which defences are being reviewed.? Let's start there.

Chair Kingham:

All right. Well, we've got a few. We have got the defences of self-defence, provocation, killing and an abusive relationship, domestic discipline. And, in that sort of group, the notion of mandatory life sentence for the offense of murder, and most of those matters are connected.

Georgia Athanasellis:

And have these sections of the Criminal Code been reviewed previously? Is it part of a regular reviewing of sections of the Criminal Code? How does that all work?

Chair Kingham:

All right. Now, this is really come about - it's the first time that I'm aware of a whole package being provided to the Commission in this way. And it's a recognition, I think, an important recognition, that there is an interaction between the way the defences and the penalties work that affect the I suppose, the circumstances for defendants in Queensland.

So, the Commission I think is fortunate that we're being tasked to deal with it in an integrated way. And I imagine the recommendations that we make at the end of the review will note that it's a package, it's not a standalone "oh here is a defence in a silo- just make this one little change over here and don't worry about the rest of the recommendations".

They really need to interact. The defences have been particularly, I think self-defence may have been looked at before, but not in this sort of comprehensive way. The impetus for this review really was the Women's Safety and Justice Task Force, led by the Honourable Margaret McMurdo. And so, there is, I guess, a strong theme in the terms of reference that relates to the way in which these defences work for women or in the context of intimate partner violence.

But it's not confined to that. And the taskforce recommended, recognised that to look at those defences only through that lens would have implications for others. And I think that was the reason that they recommended that the Law Reform Commission look at them. So, it can be done in a holistic way.

Georgia Athanasellis:

Yes. And the review into the criminal defences started in November last year. What's happened to date to start that review?

Chair Kingham:

All right. Well, we hit the ground running, I'm pleased to say, because it was clear it was coming to us. So, a lot of work was done, and we were able we were able to publish a very substantial briefing note by the end of the year, which is worth going to. Anyone who has an interest in the criminal law really should go and read this briefing.

Note. It's on the QLRC website. If you go to the Criminal Defences Review. There's my pitch - to go and read this briefing note. It is excellent and it really does demonstrate the quality of the Secretariat who prepared this briefing note for the commissioners to approve. And it in that briefing note it not only explains what the review is about, but for each defence, it has information about the defence, about how it operates, a little of its history, a little about the key concerns that the commission is already aware of with that defence and some of the points of comparison, if you like, how this defence is used in other jurisdictions.

So, it's a wonderful base for anyone practicing in criminal law.

Georgia Athanasellis:

We'll have a copy in our show notes.

Chair Kingham:

Yeah, it's yeah, good.

Georgia Athanasellis:

And so now a couple of months on, how many lawyers do you have helping you within the commission?

Chair Kingham:

We've got about 14 lawyers and about half of them are on the criminal review and about half from the mining review that I mentioned a moment ago. But I do just want to mention two other things that have happened since the review started. One is that we did a formal launch of the review in February of this year, and we had an expert panel that for that launch.

So, it was launched by Judge Tony Rafter, who is a really experienced criminal judge from the District Court. He's the Deputy Chair of the commission, and he led that launch and he is leading the review. The Honourable Margaret McMurdo spoke at the launch. And then we had a panel, including Todd Fuller, who is now the Director of Public Prosecutions.

Saul Holt, who's a leading counsel in Queensland, Melia Benn, who is an up-and-coming wonderful counsel in Queensland, and Kate Fitzgibbon, who is a really experienced academic based in Victoria.

Georgia Athanasellis:

What a panel.

Chair Kingham:

It's a fabulous panel. And the panel was a discussion of these defences. It was really nuanced and remarkably entertaining as well as informing. We recorded it, again, that's on the website.

Georgia Athanasellis:

We'll have another link to that.

Chair Kingham:

The link to the website, you'll find all of that. So those were the two key activities. There's also a speech on the website by Judge Rafter that he gave to an international criminal conference in Cairns not long after the launch, which is a great read because he's got a lot about the history of concepts of self-defence and provocation.

And so, I encourage anyone who is interested in the review or working in criminal law to use those resources, they're good.

Georgia Athanasellis:

Excellent. And so, what are the next steps? How does one go about conducting a review and preparing a report?

Chair Kingham:

All right. Well, every review is a little bit different, but similar phases and consultation and education are at the heart of the early stages of the reviews. So, the purpose of the launch was really to get a conversation going about what are the issues. And it's a two-way thing. On the one hand, the commission is wanting to communicate what its job is and the bounds, the scope of the review.

Chair Kingham:

But on the other hand, we're trying to get elicit interest engagement, ideas, and information from those who are affected by or work in the law. So, at this stage of the review, it's very heavily focused on that education and consultation. There will be a briefing paper that comes out shortly or in the first half of this year, I think, which is really exploring what are the guiding principles that the Commission will use in making its recommendations.

One of those fundamental principles about criminal law that we want to ensure, guide the recommendations about fairness, about equity, about access. So that's next. The commission is engaged in consulting widely. It will develop a consultation paper which puts out various options, and then there'll be a very formal documented process of obtaining feedback on those options before the final report and recommendations are made.

Chair Kingham:

So, it's quite iterative.

Georgia Athanasellis:

And on the consultation point, I understand the Commission is keen to hear from people with professional or personal experience of these defences. How can people engage? Is it just following that written?

Chair Kingham:

No, no, you can engage at any time. And again, if they go to the website, there is a link to registering for a service where whenever there's news you'll receive in your email inbox information. But at any time, anyone has a view on any of the defences or the penalty of life, mandatory penalty of life for murder or any of the matters that relate to the review, they can simply send us a message.

And I really want to encourage younger members of the profession to engage as well. Don't leave it to the professional associations. They, of course, will do I expect, high quality, detailed submissions at the right time. But we're wanting to hear from everyone. So, if you've had an experience or you have an opinion, express it, we'd like to hear.

Georgia Athanasellis:

Well, I was going to ask you specifically about that because I imagine there are a lot of young lawyers or even law students who are interested in this area but might discount the limited experience that they've had because they think it's, their opinion might not matter as much. So just to emphasise the point, what would you say to them?

Chair Kingham:

Who are I? I think it's a little bit like, you know, you think, I'm going to see a GP and this woman looks so young, can she possibly know what she's doing. Well, she's had the most recent training and legal education, like everything else I think is improving over time. So, I have enormous respect. I work with I've been working with associates for years, so I know the quality of the graduates who are coming from university.

I think also in the early days of practice, you might question more than you do after you've become used to a system. So, there are insights in that and so I not only encourage but value the views of younger lawyers. They should not hesitate.

Georgia Athanasellis:

Well, that is your impetus to any listener out there, please give your opinions. And when can we expect the recommendations to be released?

Chair Kingham:

Now, you've caught me on the hop a little here. The due date for the final report is November 2025. I can't remember the date. The consultation paper will be later this year or the beginning of next year. I am a bit confused about this because we've got two reviews on the go and I'm trying to keep track of what publications we're planning at what time, and it does depend a little on how our consultation programs go.

And one of the, I suppose, variables in that is that we want to make sure we do really good quality consultation with First Nations communities and people for both reviews. And that can depend upon getting into remote areas which can depend on weather, and a whole lot of other things that might be affecting the community like sorry business or litigation about land matters that are distracting the community and using resources.

So that's, there's a little fuzziness there. I'm sorry. But what we do is we regularly update our website and give if we, if we put a date or an expected month and then we change that because of circumstances, we'll update the website.

Georgia Athanasellis:

And so, once the report is finished and the recommendations are made, what happens then?

Chair Kingham:

Well, then it's, you know, it's a bit like having a baby. You know, it comes out into the world and off it goes. We pass it to we make our recommendations formally to the Attorney-General. The Attorney-General then conducts whatever process is appropriate in relation to the subject matter. Sometimes that could involve some further consultation. We are doing what we can to ensure that we in our processes bear in mind the regulatory impact assessment requirements for any department that might have to implement our recommendations.

So that's another reason good quality, comprehensive consultation is so important. But eventually we hope it will result in legislation that gives effect to our recommendations. And most recently we've seen legislation to give effect to our recommendations on the decriminalisation of the sex work industry. But, you know, working backwards before that, it was voluntary assisted dying. So, this commission has, I think, quite a good track record of the implementation of its recommendations, and that's a credit both to the work of the Commission.

Chair Kingham:

But I think also shows that over the overtime and the successive governments of different political persuasion have asked the Commission to advise on matters they're serious about reforming. And that's a good thing.

Georgia Athanasellis:

Yes. And you've mentioned a couple of times the other reviews that are on foot. What other active reviews have you got now?

Chair Kingham:

Now, the other review is into the process for deciding mining projects, sites, specifically the mining leases and the environmental authorities that are associated with the mining lease. And at the heart of that review is the process by which members of the community, landholders, First Nations people, local government, other government agencies can or should participate in the decision making about those authorities.

It's quite complex because it involves lots of different pieces of legislation in Queensland and it's the interaction between those authorities and that legislation, but also Commonwealth legislation. So, we're a little further advanced with that review as it started in June of last year. And again, there's a wealth of fabulous material on our website three briefing notes that sorry, background papers, that anyone who's interested in that topic should really go and read.

Georgia Athanasellis:

So, it sounds like much like your time on the bench, your time on the Law Reform Commission is split between the criminal law and the planning and environment and land law. I guess.

Chair Kingham:

That's right. It has continued, although as I said, the lion's share of the work for the Commission on the criminal review is being done by Tony Rafter, Judge Rafter and I see myself as his back up rather than his leader on that, as it should be. His expertise in criminal law well eclipses mine. And as I said, the paper that he did for the Global Conference on Criminal Law is really a fabulous paper and should be read.

Georgia Athanasellis:

We will some links to it. The final question that I ask every guest is what is one piece of advice that you would give to your younger self as she commenced her legal career?

Chair Kingham:

I think it would be don't worry about, don't worry about feeling unsure about, you know, the answer to the problem that you are dealing with, whether it's a problem in life or it's a problem at work. I know when I started law, the most confronting legal practice, most confronting thing was I'd be asked questions where I didn't know the answer.

The practice of law and really the practice of living is finding the answer. And what we're trained in is the method of getting there and have confidence in your skills to help you find that answer.

Georgia Athanasellis:

That's an excellent piece of advice. Thank you. Taking in Thank you for joining me today on The Callover.

Chair Kingham:

Thank you very much, Georgia.

Georgia Athanasellis:

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