

Speech for TJ Ryan Foundation 5th Anniversary

Women and the Law in Queensland: 1919, 1989 and 2009

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Zoe Rathus AM

Griffith Law School

Introduction

Acknowledgement of traditional owners.

1915 – 1919 and after

When the National Party State government was finally brought down in 1989 by the Goss-led Labor Party a friend of mine noted that the Nationals – in their various forms, including coalition with the Liberals – had outlasted the Berlin Wall. It also meant that I had known no other state government during my lifetime, and much of that had been under Joh.

So, I stand here remembering 1989 very clearly. That December and the period that followed was a time of great hope. Many friends and friends of friends of mine – therefore people who shared my values and concerns – were in positions of power and influence. And some things got done – but some things didn't. More on that later.

To be honest it is harder to remember 2009 clearly, as it is part of an interrupted chain of governments which had some kind of social justice agenda. And to be fair – both major sides of politics in Australia, and many of the smaller parties, have come on board in terms of policies and prevention strategies to deal with the ongoing catastrophe of violence against women – the area of my great passion.

But, of course, if this were 1919 it is very unlikely – but not impossible – that I would be addressing you – as a woman, a lawyer and academic. I would have had the right to vote, as a white woman, to stand for Parliament, and to be admitted as a lawyer – but women's right to practise as lawyers – and ability to take up that opportunity – was a difficult journey. Although the Act allowing women to be admitted as legal practitioners was passed in 1905 it was not until 1915 that Queensland's first woman lawyer, Agnes McWhinney, was admitted – the year that TJ Ryan became Premier. Who knows – maybe Thomas Ryan would have invited Agnes to address a gathering about the legal needs of women in 1919!

A book published by the Supreme Court library in 2005 celebrating 100 years of Queensland women lawyers first acknowledges the role Indigenous women played in the existing system of law in Australia, particularly resolving disputes and maintaining social and kinship protocols.

Moving then to the formal legal world of the new nation, the book tells the story of the first two women who tried to become lawyers in Australia - both bringing applications before the courts to uphold their rights, and both being turned away.

In 1900 Edith Haynes was supported by her father who was a King’s Counsel, but the court determined that “if the legislature intended to make women eligible for admission to the court, they should have said so in express language ...”. The word “person” was not considered to automatically include women at that time! Ada Evans, equipped with her degree from the University of Sydney Law School, was also told the law would have to change before she could be admitted. For both of these women legislative change came too late and they were never able to practise.

Australia was comparatively late with the issue of legal practice for women. The first woman lawyer in America, Arabelle Babb Mansfield, was formally admitted in 1869 in Iowa. However, America was much slower to allow women entrance into the law schools with Harvard only opening its doors to women law students in 1950 and the last University, Washington and Lee University, only changing in 1972.

But the Australian women lawyer pioneers made it possible for other women in this country to become solicitors and barristers – and things slowly changed through the 20th century. By the time I started law in 1976 at the University of Queensland I was part of an increasing presence of women in law.

Some Queensland statistics:

- ▶ 34 women solicitors admitted between 1915 and 1971
- ▶ 5 women barristers between 1926 and 1972
- ▶ 15 women graduated with law degrees from UQ between 1938 and 1968 (cf. 388 men) → women = 3.72%
- ▶ 2000 – first year number of women graduates exceeded men – 297 to 285

Now I look out at the lecture in which I talk about women and the law – never many students at lectures now with lecture capture – but of those who have attended – what do I see? All these young eager female faces looking back at me with some men sprinkled amongst them.

But women still lag in the judiciary, as barristers and as partners in law firms.

Judicial statistics – 2019

(published by the Australian Institute of Judicial Administration)

AJIA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2019

The information collated below has been compiled by the AJIA Librarian using the Court websites.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
Commonwealth			
High Court	7	3	
Federal Court	50	13	
Family Court	35	15	
Federal Circuit Court	65	26	
TOTAL	157	57	36%

Most of the states have women in the judiciary in the 30% - 40% range. Qld is in the middle.

Queensland			
Supreme Court/Court of Appeal	29	9	
District Court	40	11	
Magistrates	99	42	
TOTAL	168	62	37%

1920 – 1988

Well, the brief for this speech is to look in particular at 1919, 1989 and 2009 – but I feel the need to fill in a couple of the gaps in the nearly 70 years between 1920 and 1988. Important factors include the development of the social and behavioural sciences and changes in the status of women. These meant that laws relating to families began to reflect something of the reality of family life, with the importance of women’s role as nurturers being recognised.

Ironically, the post second world war period also provided the ingredients for a new and quite different world in which women started to move from the private to the public, students and others demonstrated against the Vietnam War and the Springbok tour, Gough Whitlam was elected and removed and the *Family Law Act* became law in 1975. On the one hand it recognises women’s role as care-givers and home-makers, but it also carefully uses gender neutral language and couches considerations in terms of the best interests of the child. From the beginning some men have viewed this Act as an attack on their rightful standing in the home – and it has continued to be controversial – and constantly subject to review. I will not dwell on this area of federal law tonight – but it is in this sphere that a backlash against advances by women is strongly felt – more on this briefly at the end.

And the year after that – 1976 – I started university. By this time the Second Wave of Feminism was in full swing – and being a woman law student was something to be proud of. My tutors turned out to be women who would hold high office – Dame Quentin Bryce, Justice Margaret White – who recently co-chaired the inquiry into the treatment of children in detention in the NT with Michael Gooda – and Judge Patsy Wolfe, who was Chief Judge of the District Court.

Domestic violence (DV) was also beginning to be talked about – but in very limited ways. In 1970s the Marriage Guidance Council of Australia was already collecting data on the presence of violence in the relationships of couples seeking counselling – at least 16% – and the figure increased when data collection became more deliberative. It is interesting to understand that DV has been in the public domain for a long time now. People seem to think that Rosie Batty began the conversation. For all the admirable work she did in a situation of personal *extremis* she was not the first to raise these issues!

Considerable grass roots activism and academic literature on DV emerged in the US and UK in the 1970s and 80s.

- 1971 – **Erin Pizzey** set up the first “modern” women’s refuge specifically for women victims of DV in England
- 1974 – Australia – **Anne Summers**

A group of women broke into two vacant houses armed with brooms and shovels and claimed squatters rights. They declared Elsie Women's Refuge Night Shelter open. In the very early days – no money – Anne Summers partly funded it by selling marijuana!

- 1975 – **Women's House** started in Brisbane – still going strong – and celebrated 40 years in 2015 with a big party. I discovered to my surprise that one of my mother's very proper and glamorous friends was an early worker – turning up in her fancy car and large sunglasses – and taking women from places of danger to safety!

But the *Family Law Act* was strangely silent on DV and early cases took the view that a man could be violent towards his wife but still be a good father. It has taken a lifetime of work of many women and men – but the family law system now understands that all forms of violence in the family are damaging to children. The court and other players in the family law system may still make mistakes, and not all children are protected, but we have come a long way over the last 40 to 50 years building on earlier social change.

I emerged from my 1970s education in 1981 to a small law firm in Toowong which was doing work for a women's refuge. As the new articled clerk I took on this work and started, for the first time, to learn about domestic violence. Although, as I say, public discussion existed I had a lot to learn from my clients and became increasingly angry about a legal system that seemed to offer little protection for these women. This is when I became involved as a founding member of the Women's Legal Service which commenced operation in 1984.

- 1980s – lots of Taskforces all around Australia
Wide consultation with women – true effects and impact of DV beginning to be understood. There were lots of phone surveys and we started to learn that some women lived with DV for decades. The way that many men presented publicly as nice guys – wonderful guys!

Many states introduced legislation intended to address DV. Qld first went with a weak piece of law initially – the *Peace and Good Behaviour Act* in 1982. Other states enacted much more comprehensive legislation and we eventually followed. In 1988 Queensland published an excellent report from a task force chaired by Ruth Matchett. This was the blueprint for Queensland's first proper domestic violence legislation.

1989

The truth that must be remembered about the domestic violence Act is that, although it commenced operation in 1989, it was actually brought in during the dying days of the Nationals – in August – by the then Minister for Families, Craig Sherrin – with Mike Ahern as Premier I believe.

Key features of the *Domestic Violence (Family Protection) Act 1989* included:

- Clarified police powers of entry on reasonable belief of DV
- Police could – and did – bring applications
- Police training

- Community awareness

To my surprise I also discovered that it was actually the Nationals who removed the marital immunity for rape. The immunity derived from the common law and Sir Matthew Hale in 1736:

A husband cannot be guilty of rape upon his wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband which she cannot retract.

Rape in *Qld Criminal Code* had read:

Any person who has carnal knowledge of a woman or girl, *not his wife*, without her consent, or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime, which is called rape.

Those three italicised words were removed in March 1989.

But it was Anne Warner who really became the first implementer of DV laws and a new attitude towards women from a government – and she worked very hard on trying to make things happen. She was, of course, the first, and for a few years the only, woman in the Goss Cabinet.

- Funding of DV positions – one at Women’s Legal Service
- Establishment of Office for Women
- Criminal Code
 - Very quickly abolished consensual sex between adult men as a crime – 1991
 - Established a whole review of the Criminal Code – nearly a century old.

As I recall this was continued by the Coalition government that followed and then in 1999, under Peter Beattie, Matt Foley, then Attorney-General, established a Task Force on Women and the Criminal Code in 1999 and I was Deputy Chair of that.

We recommended many changes. Some recommendations in respect of rape law were enacted but not in abortion or defences for women who kill violent partners. The latter was acted on under Anna Bligh in 2010. Sorry, jumped to 2009 there!

Disappointments of Goss for me – his dismissal of community legal centres and their need for increased funding and no action on abortion.

2009

I was delighted when Anna was elected Premier. We were contemporaries at UQ in the late 1970s and early 1980s. I thought she projected a very capable image. I know that good

work continued in adapting the domestic violence legislation and a whole new amended and updated piece of legislation was enacted in 2012.

As I said, also during this period a specific defence was brought in for people who kill in circumstances of domestic violence. Although I do not think that the best model has been adopted it shows a continuing commitment to improving the laws for women in this area.

But what followed was awful ... Newman was a very destructive Premier – and fortunately Qld worked that out.

The future

I have to say that it is the current Premier, Annastacia Palaszczuk and AG, Yvette D'Arth, who have overseen change that had looked impossible: abortion has been decriminalised.

And once again, somewhat ironically, a Labor government has been given the job of implementing the work of a Conservative government. This time they were handed Quentin Bryce's *Not Now Not Ever Report* on DFV and have gone about that job. This has included the establishment of specialist domestic violence courts and the introduction of a specific offence of non-lethal strangulation – an indicator of potentially fatal violence for victims of family violence.

The arena of serious concern for advocates in the domestic violence sector at present is not in the state, but in the federal sphere. Family law is in a state of crisis and the newly agreed to inquiry into the family law system is terrifying. It is to be co-chaired by two of the most conservative and potentially dangerous members of the Federal Parliament – Pauline Hanson and Kevin Andrews. Their agenda is to move away from the general findings and recommendations of two other recent inquiries which definitively showed that domestic violence is poorly handled in the family law system on some occasions.

And we know that violence against women continues – and women continue to be at risk from their partners. Approximately one woman per week is killed by her partner or former partner in Australia. Last week SBS News reported that seven women had been killed by six people allegedly known to them in just over a week. Despite all the work – all the laws, the services, the education and training, women and children still die at the hands of their partners and fathers. Most of these victims have slipped through the cracks in services – they are often known to police, hospitals, child welfare, schools – but the dots are not joined. There is often a poor ability to assess which families are truly in the most danger.

And the situation for Aboriginal and Torres Strait Islander women remains dreadful. They are at great risk from both FV and institutional violence – in the prison system, criminal 'justice' system and child welfare. There is much work to be done in this area.

And what are the most challenging areas of change in the law now? I suggest not women in the law – that is probably already surpassed – and racism – well the globalised world may start to partly take care of that – because globalisation and technology are the new frontiers – and women lawyers are out there as part of it. I believe that these two aspects of how the legal world is operating – globalisation and technology – will bring about more challenges than women ever presented!

What does it mean for our ethical rules if lawyers are operating on a global platform with lawyers who have different rules? My colleague, John Flood, described to my class the extraordinary concentration of global commercial work in the grip of a small number of huge law firms and related players.

What about virtual offices, AI programs to dissolve disputes, the use of blockchain? These challenges lie ahead. And are quite daunting.

And climate change. It is lawyers who will act for climate refugees – and lawyers who develop the laws to regulate water use, pollution, land use etc.

But we should still celebrate. The law recognises violence against women in ways unimaginable a century ago. I have had the honour of addressing you, something which probably would not have happened a century ago. So there is much to celebrate – but still much work to do – I am sure the same attitude that inspired TJ Ryan all those years ago.