

**NORTHERN TERRITORY
LAW REFORM COMMITTEE**

ANNUAL REPORT – 2005 - 2006

“Whenever you find that you are on the side of the majority, it is time to reform”

- Mark Twain

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MISSION OBJECTIVES

The objectives of the Committee are:

- To make recommendations for the reform or review of the law or legal procedure in the Northern Territory that the Committee considers to be necessary or expedient;
- To receive and consider proposals from any source for review of the law in the Northern Territory;
- Upon the request or reference of the Attorney-General, to consider and report on the reform or review of the law or legal procedure in the Northern Territory;
- To consult and cooperate with the Law Society of the Northern Territory, other Law Reform Agencies and to encourage the participation of interested individuals and organisations from the community in matters relating to the reform of the law of the Northern Territory; and
- To prepare and publish such reports, papers or minutes as the Committee may determine. The object of a report is to make recommendations,

which render more efficient the administration of justice and ensure that the law meets the needs of society.

A copy of the Committee's constitution is set out in Appendix A.

MEMBERS OF THE NORTHERN TERRITORY LAW REFORM COMMITTEE

The Hon Austin Asche AC QC	President
Mr. Max Horton OAM	Vice President
Mr. Hugh Bradley	Chief Magistrate
Ms Carolyn Richards	Ombudsman
Ms Barbara Bradshaw	Representative of Northern Territory Law Society
Mr. Richard Bruxner	Representative of Northern Territory Bar Association
Mr. Stephen Gray	Representative of the Northern Territory University
Mr. John Hughes	Representative of Northern Land Council
Ms Sharon Payne	Representative of North Australian Aboriginal Legal Aid Service
Ms Alison Worsnop	Representative of Northern Territory Police
Ms Lisa Coffey	Executive Officer

The Attorney-General for the Northern Territory, the Chief Executive Officer of the Department of Justice and the Solicitor General for the Northern Territory are ex officio members of the Committee.

HOW THE COMMITTEE OPERATES

Generally, the Committee receives references from the Attorney-General. It may also make recommendations to the Attorney-General on laws in need of review or reform, and will sometimes forward a request made by a member of the community to the Attorney-General to be considered as a topic for the Committee's attention. On receipt of a reference from the Attorney-General, the Committee assesses its resources, researches the issues of the reference. It may produce a discussion paper which is circulated among interested organisations and individuals for comment. The Committee may, in these respects, co-opt persons having expertise in the area under review to join a sub-committee or provide input that will assist the review. After the Committee has considered the comments received and consulted with relevant persons or organisations, it will prepare a final report including recommendations which is presented to the Attorney-General for consideration. It is then a matter for the Attorney-General and the Government to decide whether and when to release the report and implement the recommendations of the report.

The Committee meets periodically or as required, depending upon the progress of references, availability of members and so on. Communication in between meetings is facilitated by the Executive Officer and generally conducted via email.

Work on a particular reference is often performed by a sub-committee composed of members of the Committee and the local legal community or other organisations who possess expertise or special interest in the subject of the review. Any such sub-committee meets separately from the Committee, as often as is necessary, and is responsible for producing the review reports. The reports and recommendations, however, are always reviewed by the full Committee and must receive its approval presenting before presenting them to the Attorney-General. It is often the case that the sub-committee will meet more frequently than the Committee as a whole.

During the year 2005-2006, the full Committee met twice and the Sub-Committee on five occasions.

CHANGES IN COMMITTEE MEMBERSHIP

During the year 01 July 2005 – 30 June 2006 there have been two changes to the Committee membership.

Ms Carolyn Richards joined the Committee following her appointment as Northern Territory Ombudsman. We welcome her to the Committee.

Mr Chris Adeyoyibi from the Department of Justice stepped down as the Executive Officer and this position was taken up by Ms Lisa Coffey. We would like to record our thanks to Chris for his work with the Committee over the past year.

THE YEAR IN REVIEW – 2005 - 2006

ADOPTION OF THE UNIFORM EVIDENCE ACT IN THE NORTHERN TERRITORY

Uniform Evidence Act Terms Of Reference

In May 2005 the Committee received a reference from the Attorney General, Dr Peter Toyne, tasking it to investigate and report on whether the uniform Evidence Act should be adopted in the Northern Territory. The terms of reference were in the following terms:

1. To review the *Evidence Act (NT)* and other laws of evidence which apply in the Northern Territory and to advise the Attorney-General on the action required to facilitate the introduction of the uniform Evidence Act into the Northern Territory, including any necessary modification of the existing provisions of the uniform Evidence Act.
2. To consider whether modifications of the existing provisions of the uniform Evidence Act are required:
 - to take account of case law on the operation of the uniform Evidence Act in jurisdictions where the Act is currently in force;
 - in relation to the following topics which have been identified as areas of particular concern and are currently being considered by the Australian Law Reform Commission (“ALRC”) and the New South Wales Law Reform Commission (“NSWLRC”):
 - the examination and re-examination of witnesses, before and during proceedings;
 - the hearsay rule and its exceptions;
 - the opinion rule and its exceptions;
 - the coincidence rule;
 - the credibility rule and its exceptions; and
 - privileges, including client legal privilege.
3. In conducting the review the Northern Territory Law Reform Committee (“NTLRC”) should have regard to:
 - the experience gained in other jurisdictions in which the uniform Evidence Act has been in force for some time;
 - the desirability of promoting harmonisation of the laws of evidence throughout Australia, in particular by consulting with the other

members of the uniform Evidence Act scheme;

- the right of defendants in criminal trials to receive a fair trial; and
 - arrangements for vulnerable witnesses to provide evidence to promote their access to justice.
4. Consistent with the goal of promoting harmonisation of the laws of evidence, the Committee should collaborate with the ALRC, the NSWLRC, the Victorian Law Reform Commission (“VLRC”) and the Queensland Law Reform Commission (“QLRC”) in their respective reviews of their Evidence Laws.

The Attorney-General requested that sufficient time be allowed to consider outcomes of the New South Wales and Commonwealth’s reviews before the NTLRC finalised its report.

A Sub-Committee (“UEA Sub-Committee”) was formed to consider the reference and prepare a report for finalization by the General Committee. The UEA Sub-Committee was made up of the following members:

- 1 The Hon Austin Asche AC QC, President
- 2 Magistrate Jenny Blokland
- 3 Richard Bruxner (Representative of the NT Bar Association)
- 4 John Adams (Office of the Director of Public Prosecutions)
- 5 Lisa Coffey (Department of Justice)
- 6 Chris Adeyoyibi (NTLRC Executive Officer)

Contact was made with a number of people and organisations in the legal community inviting them to provide input to the investigation including Justice Mansfield, John Reeves QC, Jenny Harding (of ALAC), NAALAS, and Ms Sue Cox the Director of the Northern Territory Legal Aid Commission.

The UEA Sub-Committee decided that public comment would be sought on the question of the adoption of the uniform Evidence Act. A draft report would then be prepared that considered the issues highlighted in the Terms of Reference, as well as any further issues and comments made during the consultation period.

In keeping with general practice, the UEA Sub-Committee’s report would be presented to the Attorney-General only after gaining the approval of the NTLRC as a whole.

Release Of Discussion Paper

In April 2006 the UEA Sub-Committee released a discussion paper calling for comment on the possibility of introduction of the uniform Evidence Act in the

Northern Territory.

The decision to release a discussion paper was made following the lack of responses for calls in local legal publications for general comment on the topic.

The UEA Sub-Committee considered it essential that all Northern Territory legal practitioners have the opportunity to comment on the possible introduction of a scheme which will have an enormous effect on their everyday work.

The date for submissions in response to the discussion paper was extended on two occasions following requests from the Northern Territory Law Society and the NT Bar Association. Despite the extension, disappointingly very few responses were received. In the absence of negative reactions, this has very properly been interpreted by the Committee as a chorus of approval for the introduction of the uniform Evidence Act.

The NTLRC will therefore complete its report in the next reporting period understanding the shortage of comment from the profession.

Meetings And Consultation With Other Law Reform Agencies

As part of the investigation into these terms of reference the UEA Sub-Committee was tasked to collaborate with the ALRC, NSWLRC, the VLRC the QLRC.

At present the Commonwealth, New South Wales, Tasmania and Norfolk Island have enacted legislation based on the uniform Evidence Act. Victoria has indicated its intention to join the uniform scheme.

The ALRC, NSWLRC and VLRC (“the Combined Law Reform Commissions”) were all tasked to work collaboratively on a report to firstly identify and address any defects in the uniform Evidence Acts following its first ten years of operation; and secondly to maintain and further the harmonisation of the laws of evidence throughout Australia.

In preparation of their report the combined Law Reform Commissions held a number of meetings and consultations. One such meeting was attended by the chair of the NTLRC, the Hon Austin Asche AC QC and UEA Sub-Committee member Mr John Adams.

Attending this meeting in Sydney in October 2005 provided the NTLRC with valuable information about both the substance of the uniform scheme and the processes that the other commissions were using in their review, both of which are invaluable in our work in preparation of our own report. The NTLRC is very grateful for the opportunity to work with these much bigger organisations.

The QLRC conducted its own review of the scheme with its report released in 2005.

Release Of Combined Law Reform Agencies Report On UEA

The Combined Law Reform Agencies presented their report and recommendations to their respective Attorneys-General on 5 December 2005. The report, containing 63 recommendations, was tabled in the Federal Parliament and publicly released on 8 February 2006.

The NTLRC understands that the recommendations are now being considered by a working group tasked by the Standing Committee of Attorneys-General.

AUSTRALASIAN LAW REFORM AGENCIES CONFERENCE, APRIL 2006

A high point for the year was the attendance by the Chair of the NTLRC, the Hon Austin Asche AC QC and the Executive Officer, Ms Lisa Coffey at the Australasian Law Reform Agencies Conference ("ALRAC") in Manly, New South Wales.

The ALRAC Conference, held from 10-12 April, had two related themes. The first, "The Business of Law Reform" featured talks on topics such as effective consultation, empirical research and accommodating diverse cultures". The second theme, "Peering over the Horizon", saw discussions on relatively new or developing areas of concern to law reform agencies such as science, medicine, environment, Human Rights, media and international security.

The conference provided a wonderful opportunity to not only to keep abreast of recent developments and topics in the area of law reform but also to make contacts within other agencies, from Australia and abroad, that will be invaluable in the future. Information regarding the conference can be found at: <http://www.alrc.gov.au/events/events/alrac/index.html>

APPENDIX A

CONSTITUTION OF THE LAW REFORM COMMITTEE OF THE NORTHERN TERRITORY

With amendments as at 25 August 1998

Name

1. A Committee known as the **Northern Territory Law Reform Committee** is established.

Objectives

2. The objectives of the Committee are:-
 - (a) To make recommendations for the reform or review of the law or legal procedure in the Northern Territory that the Committee considers to be necessary expedient;
 - (b) To receive and consider proposals from any source for review of the law in the Northern Territory;
 - (c) Upon the request or reference of the Attorney-General to consider and report on the reform or review law or legal procedure in the Northern Territory
 - (d) To consult and cooperate with the Law Society of the Northern Territory, Law Reform Agencies and other interested persons or instrumentalities on matters relating to law reform or review;
 - (e) To prepare and publish such reports, papers or minutes as the Committee may determine.

The object of a report is to make recommendations which render more efficient the administration of justice and ensure that the law meets the needs of society.

Ex officio Membership

3. The Attorney-General, the Chief Executive Officer of the Department of Justice are each an ex officio member of the Committee and entitled to attend all meetings.

Ordinary Membership

4. The Committee consists of:-
 - (a) A President, who shall be either:
 - (i) a Judge of the Supreme Court of the Northern Territory,

nominated by the Chief Justice; or

- (ii) a retired Judge of the Supreme Court of the Northern Territory nominated by a member of the Law Reform Committee and elected by a majority of not less than two-thirds of those Law Reform Committee members present at the Committee meeting following the meeting at which the nomination was made.
- (b) A Vice-President, who shall be elected by the Committee from among their number.
- (c) The Chief Magistrate or a person nominated by the Chief Magistrate.
- (d) (deleted).
- (e) The Ombudsman or a person nominated by the Ombudsman.
- (f) The Executive Officer of the Law Society.
- (g) Not more than six legal practitioners in private practice being:
 - (i) Not more than three barristers nominated by the Bar Association;
 - (ii) Not more than three solicitors nominated by the Law Society.
- (h) Not more than three members of the academic staff of the Northern Territory University (including at least one member from the Faculty of Law) as determined by the Committee and nominated by the University.
- (i) A member nominated by the Police Force of the Northern Territory.
- (j) At least one member determined by the Committee after such consultation with such Aboriginal bodies which may include the North Australian Aboriginal Legal Service, the Central Australian Aboriginal Legal Aid Service, the Katherine Regional Aboriginal Legal Aid Service and the Aboriginal Land Councils established under the Commonwealth's *Aboriginal Land (Northern Territory) Act 1976* as the Committee thinks fit.
- (k) Such other persons as the Committee may determine either as permanent members or as members invited for the consideration of a specific matter.

Observers

5. The Committee may invite any person to attend its meetings as an observer or adviser.

Absence of President

6. In the absence of the President, the Vice-President shall preside at meetings of the Committee. In the absence of the Vice-President, then the members present at a meeting shall by simple majority elect a member to preside at that meeting.

Notice of Meetings

7. The Executive Officer of the Committee shall send members notice of all meetings together with the agenda at least three days before the appointed meeting.

Meetings

8. The Committee shall meet on the last Friday of each month or such other times as it determines. Consideration of matters shall be in accordance with the agenda or as the Committee otherwise determines.

Executive Officer

9. The Executive Officer of the Committee shall attend all meetings and keep and circulate copies of the minutes to all members.

Quorum

10. The quorum for a meeting shall be five members excluding the Attorney-General, Solicitor-General, and the Secretary of the Northern Territory Attorney-General's Department.

Where the Attorney-General, the Solicitor-General, or the Secretary of the Northern Territory Attorney-General's Department or any combination thereof attend a meeting of the Committee they shall count for the purposes of the quorum.

Venue

11. The Committee shall meet in such venue as determined from time to time by the Committee.

Procedure

12. The procedure at meetings shall be as determined by the Committee, but shall be as simple and free of formality as practicable.

Voting

13. Each member shall have one vote on any matter requiring a decision and, in the case of equality of votes, the person presiding at the meeting shall have a casting vote. Votes shall be by show of hands unless otherwise determined.

Subcommittees

14. The Committee may establish Sub-committees of such members, and such other persons as it determines to consider and report to the Committee on any matter.

Reports

15. All reports, papers or minutes of the Committee shall be published as the Committee determines but, in any event, one copy of any report, paper or minutes shall be circulated to each member.

Resignations and Terminations

16. (a) A member may resign his or her membership by written notice to the Executive Officer who shall table the resignation at the next meeting of the Committee. It shall take effect upon acceptance by the Committee.
- (b) The Committee may terminate the membership of a nominated member or a member determined by the Committee by fourteen days' written notice to the member and to the person or body which nominated such member.
- (c) The Committee may terminate the membership of any member of the Committee who, without the approval of the Committee, does not attend three consecutive meetings of the Committee or who attends less than half of the Committee meetings in a calendar year.

Vacancies

17. Upon the occurrence of a vacancy in the ordinary membership of the Committee, the Executive Officer of the Committee shall take steps to ensure a new member is nominated as soon as practicable thereafter to fill the vacancy. The proceedings of the Committee are not affected or invalidated by the existence of a vacancy.

Alterations of Constitution

18. (a) No amendment or repeal of the Constitution shall be made unless:
- (iii) the proposed amendment or repeal is submitted to a meeting of the Committee called for that purpose; and
 - (iv) not less than two-thirds of those members present vote in favour of the proposal.
- (b) Amendments or repeals of the Constitution shall take effect from the meeting which adopts/confirms minutes of the meeting at which the amendment repeals were made.

Transitional

19. The persons holding office as members of the Committee as then constituted immediately before the commencement of this Constitution shall, subject to clause 16, on and after the commencement of this Constitution, continue to hold office as members in their respective capacities and, where appropriate, as if they were nominated as or determined to be members on the commencement of this Constitution.