

**NORTHERN TERRITORY
LAW REFORM COMMITTEE
ANNUAL REPORT – 2006 - 2007**

“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	Vice President
The Hon Jenny Blokland CM	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. John Hughes	Representative of Northern Land Council
Mr Peter Tiffin (Former Member)	Representative of Northern Territory Police
Ms Peggy Dwyer	Representative of North Australian Aboriginal Justice Agency (NAAJA)
Mr Roman Micairan	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 at monthly intervals 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 2006-2007, the full Committee met on two occasions and the Sub-Committee on six occasions.

CHANGES IN COMMITTEE MEMBERSHIP

During the year 01 July 2006 – 30 June 2007 there have been a number of changes to the Committee membership.

Mr Hugh Bradley has left the Committee following his retirement from his position as Chief Magistrate. We thank Mr Bradley for his valuable contribution to the Committee over the years and hope that his interest in our projects will continue.

In place of Mr Bradley we welcomed the new Chief Magistrate, Ms Jenny Blokland. Jenny has worked with the Committee previously, including as a member of the Sub-Committee formed to consider the Uniform Evidence Act reference.

Mr Stephen Gray has resigned from his position at Charles Darwin University and moved interstate. The Committee thanks him for his contribution over the years and wishes him well in his new pursuits.

The Head of Law and Business at Charles Darwin University has been contacted in relation to a replacement for Mr Gray. Mr Matthew Storey has replaced Mr Gray as the Charles Darwin University representative on the Committee.

Ms Sharon Payne, former CEO of the North Australian Aboriginal Justice Agency (NAAJA) has left her position with NAAJA. We thank Sharon for her enthusiasm for the Committee and the contributions she has made. We wish her well in the future. Ms Peggy Dwyer of NAAJA has replaced Ms Sharon Payne.

Ms Lisa Coffey from the Department of Justice stepped down as the Executive Officer and this position was taken up by Mr Roman Micairan.

THE YEAR IN REVIEW – 2006 - 2007

ADOPTION OF THE UNIFORM EVIDENCE ACT IN THE NORTHERN TERRITORY

In May 2005 the Committee received a reference from the former 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 final report of the Committee on this topic was presented to the Attorney-General, the Hon Syd Stirling MLA by Austin Asche AC QC at a meeting in September 2006.

The report was the culmination of over a year's work by the Committee. In summary, the report recommended that the Attorney General consider adoption of the Uniform Evidence Act scheme. The full recommendations are as follows:

1. that the UEA be adopted in the Northern Territory;
2. that, if considered necessary, elements that currently exist in the NTEA which do not fit within the UEA as being more properly procedural be excised from the NTEA and reproduced as separate statutes (this procedure has already been adopted in New South Wales and Tasmania as discussed);
3. that if the UEA is adopted into Northern Territory legislation there be a period of one year from the date of the passing of the Act and associated reforms by parliament and the commencing date of operation;
4. that co-operation be fostered between the legal profession of the Northern Territory and the Northern Territory Department of Justice to facilitate progress towards acceptance and understanding of the UEA;
5. that recognising that a representative of the Northern Territory Department of Justice is working with the SCAG working group to consider the amendments to the UEA arising from the ALRC report 102, that such work continue and be considered along with this Report in the adoption of the UEA.

The report was publicly released in March 2007. The Attorney-General has acknowledged the recommendations contained therein, although at this stage he has declined to effect the recommendations.

A NEW REFERENCE

Following the completion of the Uniform Evidence Act report, the NTLRC met

to consider proposals for new references. Consultation was also conducted with members of the Department of Justice and a list of recommended topics presented to the Department in the reporting period.

The Attorney-General has tasked the NTLRC to investigate and report to the Attorney-General on the reports submitted by the National Committee on Uniform Succession Laws to the Standing Committee of Attorneys-General on:

- 1 Family Provision; and
- 2 Intestacy.

With a view to reporting back to the Attorney-General on the model laws, their suitability for adoption in the Northern Territory, any steps that would need to be taken to allow for their adoption, and any other issues surrounding them.

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.

- (a) A Vice-President, who shall be elected by the Committee from among their number.
- (b) The Chief Magistrate or a person nominated by the Chief Magistrate.
- (c) (deleted).
- (d) The Ombudsman or a person nominated by the Ombudsman.
- (e) The Executive Officer of the Law Society.
- (f) 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.
- (g) Not more than 3 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.
- (h) A member nominated by the Police Force of the Northern Territory.
- (i) 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.
- (j) 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. (1) No amendment or repeal of the Constitution shall be made unless:
 - (a) the proposed amendment or repeal is submitted to a meeting of the Committee called for that purpose; and
 - (b) not less than two-thirds of those members present vote in favour of the proposal.
- (2) 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.