

# Reflecting on a life in Territory law

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I feel privileged to have spent a large part of my career in service to the law in the NT, an interest that still continues. It began when friend and lawyer the late Claude Rochecouste suggested I apply for a job with the Commonwealth Department of the Northern Territory in Darwin. On flying up to a successful interview, I joined the Department in October 1974 and became a part of a constitutional study group, producing a document 'Co-terminality' on the correspondence of legislative and executive powers under Self-Government. Also attended was the first session on the new, fully elected NT Legislative Assembly, thus granting a form of representative democracy to the Territory. Admission as a legal practitioner in the NT followed in the old Supreme Court building. Fortunately our family flew out to Perth the day or so before Cyclone Tracey, and the rented house in which we had been living in Nakara was totally destroyed with all our belongings.

Returning to Darwin soon after the cyclone, I was engaged in assisting the restoration of NT legislative processes. Without advance notice I was directed urgently to Sydney without an airline ticket to have an Ordinance concerning the question of the extension of the cyclone emergency permit system partially disallowed by the Governor-General, attending at Kirribilli House. Soon thereafter I was transferred to the Attorney-General's Department in Darwin with Clem O'Sullivan and then Bill Raby.

It was shortly after that that the *Aboriginal Land Rights (Northern Territory) Act 1976* was enacted by the Commonwealth Parliament. There was considerable debate about the extent to which the NT Legislative Assembly should be able to enact complementary legislation. This has thrown up an array of complex legal questions since in association with the subsequent grant of Self-Government.

The Report of the Joint Committee of the Commonwealth Parliament on the Constitutional Development of the NT

in 1974, as confirmed by a supplementary Report after the Cyclone, had recommended a grant of NT Self-Government. Preparatory to that there was established by Ordinance the office of Executive Member for Law in the NT Legislative Assembly, with very limited functions under selected NT Ordinances. I was directed to assist the office-bearer the late Liz Andrews, and later Paul Everingham. For this purpose I was co-opted as the sole member of the NT Department of Law as described in the old Public Service Ordinance. Compulsory transfer to the NT Public Service with a number of other members of the Attorney-General's Department followed on 1 January 1978. My main tasks were to assist Ian Barker QC at the Bar (who was to become the first NT Solicitor-General upon Self-Government on 1 July 1978) and in formulating plans and legislation for Self-Government. It was a very busy period.

With Self-Government on 1 July 1978 I assumed the new office of NT Crown Solicitor. A very hectic period followed in establishing a completely new Department in a new Government and in dealing with the administrative requirements of that change, greatly assisted by Terry Sullivan and others too numerous to name. Also the legal challenges flowing from the grant of Self-Government had to be actively dealt with, including various litigious matters from the High Court down, in establishing new constitutional/legal processes including with other governments and in the provision of legal advice to new NT departments. The change to Self-Government by the *Commonwealth Act*<sup>2</sup> was a momentous change, setting up a new body politic under the Crown separate from the Commonwealth, and with Ministers of the Territory chosen from the members of the NT Legislative Assembly<sup>3</sup> and together advising the NT Administrator in transferred matters.<sup>4</sup> Thus a form of responsible government on Westminster lines was introduced in the NT for the first time, an event without precedent for a Commonwealth territory. A matter of great importance was the establishment through the courts of the constitutional

status of the new NT body politic under the Crown and its powers under commonwealth legislation and the proper interpretation of that legislation. There was also a need for a raft of new NT legislation to facilitate this. A lot of work involved assistance to the energetic first Chief Minister Paul Everingham.

Subsequently in 1979 it was decided to transfer responsibility to the self-governing NT of NT courts, with the repeal of existing commonwealth legislation and the enactment of the new *Supreme Court Act* of the Territory.

A period of ill health followed in late 1979. Returning to work I was engaged with Dr Jim Eedle's University Planning Authority in designing new university legislation for what eventually became the new Northern Territory University (NTU).<sup>5</sup> From the inception of the university, initially as a college of Queensland University in the old hospital site (where my second son had been born in what became the Law School library), under Professor Ned Aughterson, I gave part-time law lectures in a variety of law subjects, later becoming an Adjunct Professor. These lectures continued for many years up until retirement from the Department.

Then I returned to the NT Department of Law, undertaking general legal duties. This included assisting in a variety of litigation assisting several solicitor-generals, including Brian Martin QC and Tom Pauling QC and other counsel, involving constitutional, mining, administrative, tax, land including land resumption, Aboriginal, university and other law issues. A significant matter involved the proposed world heritage listing of Kakadu Stage 2, involving both litigation and the preparation of a submission to the World Heritage Committee hearing in Paris. Some important constitutional cases from the point of view of confirming the status of Self-Government were the intervention in the Capital Duplicators case,<sup>6</sup> and in *Svikart v Stewart*.<sup>7</sup> An important case on the rights of impaired children was Marion's case.<sup>8</sup> A case that assisted in the establishing of NTU was *Gipalis v Schnierer*.<sup>9</sup> There were many other cases in which I assisted. At the same time an LLM thesis was completed with UQ with the late Professor Daryl Lumb. With Alastair Heatley I published *Selected Constitutional Documents on the Northern Territory*.<sup>10</sup>



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Later on I signed the Bar roll and became Crown Counsel, later Senior Crown Counsel. The work continued much the same, assisting both Solicitor-Generals Tom Pauling QC and since leaving the Department Michael Grant QC.<sup>11</sup>

When a select committee of the NT Legislative Assembly was first established under the chair of Steve Hatton MLA, and thereafter over quite a number of years, I was legal adviser to the Committee (in conjunction with the Executive officer Rick Grey) helping to prepare various papers, giving advice and assisting in the various Committee hearings and enquiries. Extensive hearings were held throughout the NT. This led to a final Report of the Committee in many volumes in 1996 which included a draft new NT Constitution.<sup>12</sup> This was followed by a NT Constitutional Convention at which I was legal adviser. The subsequent NT referendum for statehood was lost.

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After that I decided to take early retirement and moved to Magnetic Island. I have since moved to Kuranda and opened a small bookshop/office. My admission to the Bar has been maintained ever since and I continue to accept briefs. I also give annual CPD lectures for the Law Society NT, and sometimes for the Department, many of which are published by the Society under the title 'Lectures on Northern Territory Public Law'.<sup>13</sup>

I am extremely grateful for the opportunity to have been able to work and live in the NT for so many years, work that was to me extremely interesting and challenging. I would not have had the same opportunities if I had stayed in a state. The NT has been through a rapidly evolving and unique period in its development, sometimes with rough times, sometimes smoother, but it has always thrown up fascinating legal work. I hope and believe the Territory will emerge in the future to the best advantage of all Territorians working harmoniously together and wish it the very best.

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2 *Northern Territory (Self-Government) Act 1978* and other commonwealth legislation.

3 The Legislative Assembly was continued upon Self-Government with virtually the same expansive plenary legislative powers for the Territory.

4 See the Northern Territory (Self-Government) Regulations as amended.

5 Now Charles Darwin University.

6 (1992) 177 CLR 248

7 (1994) 181 CLR 548

8 (1992) 175 CLR 218

9 (1987) 17 FCR 339

10 NT Department of Law, 1989.

11 Now Chief Justice.

12 Report of the Sessional Committee of the Legislative Assembly on Constitutional Development, November 1996.

13 Law Society of the NT, 2016.

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