

# Researching Northern Territory Legislation

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## INTRODUCTION

Many of the problems historically associated with accessing the legislation of the Northern Territory of Australia were the result of the physical difficulty of obtaining up-to-date hard copy legislation. Many of these difficulties have been alleviated in recent times with the advent of the electronic resources of the Internet. It is now possible to gain ready and reasonably up-to-date access to Northern Territory statute law from your desktop. Not so easy is the task of ascertaining what legislation may be relevant in the Northern Territory, given the Territory's unusual constitutional history, the legacy of which has been that many legislatures have been competent to pass laws in relation to the Territory over the years

This note will refer first to the possible sources of law in the Northern Territory<sup>1</sup> and will then deal with the distinctive aspects of, and tools available for, accessing Northern Territory legislation.

## SOURCES OF LAW IN THE NORTHERN TERRITORY

The Northern Territory was originally part of the colony of New South Wales and, for a brief period in 1846, a separate colony of North Australia. However for present purposes it is sufficient to note that the Northern Territory was annexed to South Australia by Letters Patent from 9 September 1863. Because it was part of the colony of South Australia, many South Australian laws were passed that extended to the Territory, either as part of that colony or by express application to the Territory. Some South Australian laws were expressly declared not to apply to the Northern Territory. The Northern Territory was expressly included as part of South Australia on federation in 1901.<sup>2</sup>

As part of the colony of South Australia, the Northern Territory also received as much of the imperial law of England (both common law and statute law) as was applicable to the situation and condition of the infant penal colony at the date of settlement.

A Northern Territory Act, the *Sources of the Law Act 1985* (NT), has clarified the extent of operation of both imperial and South Australian legislation in the Territory. By virtue of section 3 of that Act, the date of reception of English law into the Territory is stated to be the same date as the date fixed for the establishment of South Australia, namely, 28 December 1836. Section 2 of the *Sources of the Law Act 1985* (NT) states that, where any question arises as to whether a law in force before 22 September 1863 is still or was in

<sup>1</sup> These matters are covered only very superficially in this article. For more detail see GR Nicholson "The Constitutional Status of the Self-Governing Northern Territory" *Australian Law Journal* 59 (1985) 698 and the collection of materials in Loveday, P. and McNab, P. (eds), *Australia's Seventh State*. The North Australia Research Unit and the Law Society of the Northern Territory, 1988

<sup>2</sup> By virtue of the definition of "the states" in cl 6 of the *Commonwealth of Australia Constitution Act 1900*

force in the Territory, the law in force in South Australia immediately before that date (including the common law and statute law of England), is taken to be the law in force to the exclusion of other law. The particular relevance of this provision is that it has the effect of excluding the operation of any early New South Wales law in the Territory.<sup>3</sup>

The Northern Territory was surrendered by South Australia to the Commonwealth from 1 January 1911. From that date it became a Territory of the Commonwealth, a status that it continues to have today.<sup>4</sup> All laws in force in the Territory at the time of its acceptance by the Commonwealth were continued by s 7 of the *Northern Territory Acceptance Act 1910* (Cth), subject to any later amendment or repeal. Pursuant to the *Northern Territory (Administration) Act 1910* (Cth), the Commonwealth passed laws (which were called ‘ordinances’) applicable specifically to the Northern Territory. These ordinances were made by the Governor-General, as there was no separate Territory legislature. An Administrator was appointed under that Act who was responsible to the Commonwealth for the Government of the Territory.

In 1947, by an amendment to the *Northern Territory (Administration) Act 1910* (Cth), a Northern Territory Legislative Council was established, initially with a minority of elected members. During the period 1947-1974, a total of ten Legislative Councils were constituted, with the mix between official (and, for a period, some non-official) members and elected members eventually evolving into a Legislative Council with a majority of elected (over official) members. In 1974, a fully elected Legislative Assembly of 19 members replaced the Legislative Council. Throughout this period, the Commonwealth remained in control of the legislative process of both the Legislative Council and the Legislative Assembly by the exercise, or threat of exercise, of its power of veto over Territory legislation.

On 1 July 1978, the *Northern Territory (Self-Government) Act 1978* (Cth) came into operation. In broad terms, this Act established a new government for the Northern Territory, with a general grant of plenary power to the unicameral Legislative Assembly<sup>5</sup> and with its own ministers of the Territory who had executive authority in a wide range of matters defined by regulations under the Act.<sup>6</sup> The major powers retained by the Commonwealth included rights in respect of Aboriginal land, the mining of uranium and other prescribed substances under the *Atomic Energy Act 1953* (Cth), and industrial relations. The laws of the Northern Territory Legislative Assembly, called ‘Acts’ (not ordinances),<sup>7</sup> passed since self-government are, of course, the major source of current legislation in the Northern Territory. Such Acts must be assented to by the Administrator or the Governor-General under the *Northern Territory (Self-Government) Act 1978*.<sup>8</sup> It is possible under the Act for the Governor-General to disallow certain laws.<sup>9</sup>

<sup>3</sup> Whether NSW law had been displaced had been called into question by the comments of Gallop J in *Rogers v Squire* (1978) 23 ALR 111.

<sup>4</sup> *Northern Territory Surrender Act 1907* (SA) and *Northern Territory Acceptance Act 1910* (Cth).

<sup>5</sup> *Northern Territory (Self-Government) Act 1978* (Cth) s 6 confers a power on the Legislative Assembly, subject to the Act, to make laws for the peace order and good government of the Territory.

<sup>6</sup> *Northern Territory (Self-Government) Act 1978* (Cth) s 35 and see reg 4 *Northern Territory (Self-Government) Regulations*. By amendment to the *Northern Territory (Self-Government) Regulations* in 1979 Ministers of the Territory were also granted executive authority with respect to “maintenance of law and order and the administration of justice”.

<sup>7</sup> *Interpretation Act 1978* (NT) ss 18, 49.

<sup>8</sup> *Northern Territory (Self-Government) Act 1978* (Cth) s7 or s 8. Re questions of legislative power in the self governing Territory and assent see *Wake v Northern Territory* (1996) 124 FLR 298.

<sup>9</sup> *Northern Territory (Self-Government) Act 1978* (Cth) Part III Div 1.

Therefore, the possible sources of statute law for the Northern Territory are:

- Applicable English statute law in force immediately before 28 December 1836 and any subsequent Imperial statutes applied to the Australian colonies by express words or necessary intendment and not since repealed;
- Any South Australian statute law applying in the Territory from annexation in 1863 and still in force at the end of 1910 and not since repealed in its application to the Northern Territory;<sup>10</sup>
- Commonwealth statute law of two varieties:
  - Commonwealth statute law passed since federation and applicable to the Territory under the Territories power of the *Constitution* s 122;<sup>11</sup>
  - Territory legislation (ordinances) passed since the beginning of 1911 under the *Northern Territory (Administration) Act 1910* (Cth); and
- Laws of the Northern Territory Legislation Assembly passed since self-government in 1978 (and any pre-existing Territory laws passed by the previously existing Territory legislatures and not since repealed).

#### **ACCESSING NORTHERN TERRITORY LEGISLATION**

The major hard copy finding tool in relation to Northern Territory legislation is the *Northern Territory of Australia Index to Legislation* ('the Blue Book') which is published twice yearly by the Northern Territory Government Printer. It is possible to obtain copies of this publication, of Bills (and, of course, of legislation) from the Government Information Centre in Darwin.<sup>12</sup>

#### **EXPLANATORY MEMORANDA/NOTES**

The production of Explanatory Notes or Memoranda is not a standard practice at the current time. The Northern Territory has only just started producing Explanatory Memoranda for (some only of) the current Bills.<sup>13</sup> Once tabled, these documents become part of the Original Paper Series of the Parliament but their general availability, as at the time of writing, is uncertain.

#### **THE INTERNET**

Probably the most significant development in relation to accessing Northern Territory legislation and the Northern Territory legislative process from outside the Territory is the development of Internet access which has almost completely overcome the difficulties of distance as so often has proved to be the case. A recent and dramatic example of this resource utilisation in the Northern Territory was the unprecedented interest in and demand for Internet access to the *Rights of the Terminally Ill Act 1995* (NT) and associated material.<sup>14</sup>

<sup>10</sup> See the *Northern Territory of Australia Index to Legislation* (NT Government Printer, Darwin) for a list of SA Acts in force in the Territory. This number is ever diminishing due to a process of repeal under Territory law.

<sup>11</sup> E.g. *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

<sup>12</sup> Contactable through the Northern Territory Government Switchboard on (08) 89995511.

<sup>13</sup> Three (3) were tabled in the last sitting of the Legislative Assembly (as at June 1998).

<sup>14</sup> See <http://www.nt.gov.au/lant/rotti/>

For those researching Northern Territory legislation, or merely interested in aspects of it, the various materials available on sites (still under construction) will prove invaluable.

### *Hansard and Legislation*

Via the Northern Territory Government Home Page,<sup>15</sup> the Legislative Assembly of the Northern Territory page<sup>16</sup> provides Internet access to Hansard (complete parliamentary records of the Sixth, Seventh and Eight Assemblies since 4/12/90 and also to daily Hansard).<sup>17</sup> In the future, it is proposed also to provide an Index tool at this site that, amongst other things, will facilitate easy access to the various legislative stages

Current Northern Territory legislation (Acts, Regulations, By-laws, Rules and Schemes) may be accessed from the Legislative Assembly of the Northern Territory page (and from a number of other Northern Territory Government sites).

### *The Register of Legislation*

The Register of Legislation is currently available via the Chief Minister's Home Page<sup>18</sup> This extremely useful tool contains details of Bills that are to be or have been considered by the Legislative Assembly and details of Acts resulting from those legislative proposals The information available through the Register of Legislation includes the Bill's serial number, the date of its introduction, when it was passed, the consequent Act number, date of assent, date of commencement and any remarks in relation to it (such as bills it might be cognate with)

Further, the Register also provides access to the full text of the Bills, together with the text of the second reading speech The location of this material (via the Chief Minister's Home Page) makes it a little obscure to find, but it is understood that it may shortly be transferred to the Legislative Assembly of the Northern Territory page which would seem the logical place for this most valuable of tools.

### *Further Electronic Access*

Additional to the various Northern Territory access points mentioned above, further electronic access to NT legislation is available through the ScalePlus site<sup>19</sup> There you can access:

- NT historical legislation (i.e. archived reprints)
- NT Acts (current consolidations)
- NT Regulations (current consolidations)

Consolidated Acts and consolidated Regulations, By-laws, and Schemes of the Northern Territory of Australia are, of course, also available via Austlii.<sup>20</sup>

<sup>15</sup> <http://www.nt.gov.au/government.html>

<sup>16</sup> <http://www.nt.gov.au/lant/>

<sup>17</sup> <http://www.nt.gov.au/lant/hansard/>

<sup>18</sup> <http://notes.nt.gov.au/dcm/Dcm.nsf>

<sup>19</sup> <http://scaleplus.law.gov.au/>

<sup>20</sup> [http://www.austlii.edu.au/au/legis/nt/consol\\_act/](http://www.austlii.edu.au/au/legis/nt/consol_act/) and [http://www.austlii.edu.au/au/legis/nt/consol\\_reg/](http://www.austlii.edu.au/au/legis/nt/consol_reg/)

### **CONCLUSION**

The Northern Territory is a small jurisdiction both in terms of its population and the number of judicial precedents it generates. Nevertheless, the jurisdiction has a full range of legislation and, as has been recently evidenced by the euthanasia debate, is often a testing ground for legislative innovations. That the legislation and legislative processes of this small and previously difficult to access jurisdiction are now available for scrutiny over the Internet is an initiative to be applauded and one of which full advantage should be taken.