

## Chapter 1

# The Uniform Evidence Law in the Islands

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### I. Introduction: The Mainland UEL

Among the many bland and imprecise pronouncements in the High Court of Australia's bellwether 2016 ruling on the meaning of 'probative value' under the Uniform Evidence Law (UEL) is the following:

The Evidence Act is in substantially the same terms as legislation adopted by the Commonwealth and by other States and Territories, and to that extent may be said to be uniform.<sup>1</sup>

The blandness is evident – the Court is speaking of a decade-in-the-making landmark contemporary reform of an entire field of law – but the imprecision is less so. The 'Evidence Act' the majority names is actually the Northern Territory's *Evidence (National Uniform Legislation) Act* (enacted in 2011), not its *Evidence Act* (enacted as an ordinance in 1939, and still on the Territory's statute books).<sup>2</sup> The majority's footnotes list the UELs of the Commonwealth, three States and Australia's other internal Territory, but not the 12-year old statute of an Australian external territory.<sup>3</sup> As will be discussed in this chapter, the majority also neglects several non-Australian jurisdictions with legislation 'in substantially the same terms' as the legislation under discussion, but so does everyone else in Australia.

More telling than these shortcuts is the UEL case law the majority drew on to resolve the major interpretative question before the Court. Apart from the Northern Territory decision under appeal, the majority discusses and cites judgments from just two UEL jurisdictions: New South Wales (with seven citations) and Victoria (with one). There is nothing wrong, of course, with the majority focusing on the case law of these two States, respectively the UEL's second-most populous (and third-oldest) jurisdiction (as well as the one that has engaged the most with the definition of probative value, generally in support of the majority's preferred view) and its third-most populous jurisdiction (and one that has spent much of its time under the UEL challenging the readings of its northern neighbour). But there is no charitable explanation for the majority's failure to mention any of the various Australian Capital Territory and Tasmanian judgments on this very issue before the Court (mostly favouring the majority view, sometimes at

1 *IMM v The Queen* [2016] HCA 14, [9].

2 The majority coins 'Evidence Act' as a shorthand for the territory's UEL, see [3], without mentioning its other *Evidence Act*.

3 *Evidence Act 2004* (NI).

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