



NORTHERN TERRITORY
***of* AUSTRALIA**

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Member for Fong Lim

HANSARD EXTRACT

THE HON AUSTIN ASCHE AC KC

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His Honour's legacy will endure for generations to come in every student who walks the halls of Charles Darwin University, every young lawyer who steps into a courtroom with a commitment to justice and every Territorian who believes that service to the community is of the highest calling.

We say farewell to an exceptional man, but we do so in the knowledge of and gratitude for the impact his life will forever have on the Territory.

On behalf of the Territory Labor team I offer my sincere condolences to Mr Asche's children, Wendy and Harry; to the grandchildren; and to all the family, friends and former colleagues of Mr Asche.

May he rest in peace.

Dr RAHMAN (Fong Lim): Madam Speaker:

*All the world's a stage,
And all the men and women merely players;
They have their exits and their entrances;
And one man in his time plays many parts ...*

Tonight I will speak to the many parts of the rich life lived by a Shakespearean, Hon Austin Asche AC, KC.

His Honour passed away in December 2024 at the age of 99, leaving behind an extraordinary legacy of service, leadership and dedication to the Northern Territory.

Austin Asche was born in Melbourne on 28 November 1925. He grew up in Darwin, and his early education was at Darwin Primary School. He served in the RAAF during the final years of the Second World War. He studied law at the University of Melbourne and graduated with a BA, an LLM, and then was admitted to the Queensland Bar before being called to the Victorian Bar in 1954, where he practised for 20-plus years.

He took silk in 1972, and in 1976 was appointed to the newly formed federal Family Court of Australia. He served as a Supreme Court Judge of the Northern Territory and later as Chief Justice from 1987 to 1993. He was made a Companion in the Order of Australia in 1994. In 1993 he resigned the Chief Justiceship to assume the role of the 15th Administrator of the NT, serving from 1 March 1993 to 16 February 1997.

These are the bald facts and particulars of His Honour's life and career. My focus, however, is on His Honour's contribution as President of the Law Reform Committee of the Northern Territory for over 20 years, from 1997 to 2018. I choose to focus on this because, quite deliberately, I want to engage with more than those bare-bullet points and try to shine a light on His Honour's depth of commitment to the laws of the Northern Territory.

His Honour's period of contribution as Chair was between 1997 and 2018, over which period he was aged between 71 and 92. Stop to think about that for a second: while everyone else at age 70 may have gone out and played a round of golf or two, Austin Asche decided to devote himself for the best part of another 20 years to chairing a law reform committee. Notwithstanding that, he was a fine sportsman. He rowed in pairs, fours and eights in his younger years and, as the Chief Minister pointed out, he was also playing competitive tennis well into his nineties.

In his capacity as Chair, under his presidency, that committee produced a staggering 26 reports—a staggering body of work that I would wager to say surpasses the combined volume of written output of all the MLAs in this room. With the exception of one report, he was involved in every one of those. For the 25 subcommittees responsible for examining the complex legal issues involved, he prepared many of the reports; in fact, he drafted a lot of the stuff himself.

His fingerprints are visible—sometimes subtly; other times more blatantly and cheekily—in the reports that he wrote. The start of the Report on the Uniform Evidence Act begins with a Dickensian quote from chapter 34 of *The Pickwick Papers*:

'Oh, quite enough to get, Sir, as the soldier said ven they ordered him three hundred and fifty lashes,' replied Sam.

'You must not tell us what the soldier, or what any other man, said, Sir,' interposed the judge; 'it's not evidence.'

Looking at the 26 reports gives you an idea of the importance of the subject matter and the hard work involved in those reports. I will cite a few of them: Report 18, Report on the Law of Property; Report 23, Report on Privilege Against Self-incrimination; Report 25, Report on the Right to Silence; Report 26, Report on Whistleblowers Legislation; Report 28, Report on Aboriginal Customary Law; Report 30, Report on the Uniform Evidence Act; Report 36, Report on Defendants Submitting to Psychiatric or Other Medical Examination; Report 39, Report on Self-induced Intoxication; and Report 43, Report on the Non-Consensual Sharing of Intimate Images.

Austin Asche did all this voluntarily, without being remunerated for his efforts. Not for a penny did he have a hand in 26 law reform committee reports. Many of these reports provide the basis for important changes in the laws that are still with us in the Northern Territory. Indulge me to provide three examples.

Report 18, Report on the Law of Property, from October 1998, led to the *Law of Property Act 2000*. This is a good example of the importance of the Law Reform Committee's work because no-one ever talks about general NT property law as opposed to residential tenancies, and that is because the *Law of Property Act 2000* is particularly good legislation. It is clear, comprehensible, fair and based on established legal principles and, therefore, it is predictable.

A second example is Report 30, Report on the Uniform Evidence Act, from September 2006. It led to the *Evidence (National Uniform Legislation) Act 2011* in the NT, which is used every day in courts in this jurisdiction and brings the Territory into line with every other Australian jurisdiction on a matter of significant importance.

Report 43, Report on the Non-Consensual Sharing of Intimate Images, similarly led to the *Criminal Code Amendment (Intimate Images) Act 2018*.

As you can see, Austin Asche was not just a hobbyist; he was actively reforming our laws from the sidelines in the most appropriate manner. Some of the reports he authored, penned or contributed to resulted in recommendations to do nothing, which is advice that is equally important as recommendations to make changes. For example, Report 25, Report on the Right to Silence, from 2002 finishes with this paragraph:

This Committee believes that it can create a record with the shortest recommendation ever recorded by any Law Reform Agency in Australia or elsewhere.

The task given this Committee was to consider the rationale of the UK Criminal Justice and Public Order Act and the question essentially asked was whether it was expedient for the Northern Territory parliament to adopt it or some variant of it.

To that question this Committee records the following and only recommendation:

No.

That was on page 37 of a report which before then had provided a very thorough analysis of the historical foundation of the right to silence, which explained the one-word recommendation.

Therein is where we see His Honour's skilfulness. He was not just highly intelligent and articulate; he had a profound knowledge of what others had said and experienced in the past and on the same legislative topics. He deployed that knowledge and experience to the great advantage of the Northern Territory.

To put it another way, he utilised data and research in a context-specific manner—something we should all take heed of in this House. Legislators who do not investigate and understand what lawmakers have tried in the past and where they failed or succeeded, risk missing out on the benefits of that experience. It is important for this House to make sure that we continue to look out for and get the benefit of learning from scholars like His Honour.

His Honour was also a fierce advocate for the Northern Territory in constitutional affairs and passionately defended the autonomy of this legislature. In the Standing Committee on Legal and Constitutional Affairs Inquiry into the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill in June 2008, he cited, at page 46:

Any Commonwealth enactment based on policy—that is, based on a difference of opinion between the Commonwealth and the Territory—is of course an interference with the self-government of the Territory. If the Commonwealth disagrees with a policy of a territory then the grant of self-government is really illusory.

Similarly, at page 47, His Honour pointed out if the size of the legislature or a jurisdiction's population became the reason to query the legitimacy of a legislature, then:

...the Tasmanians ought to be starting to feel very uncomfortable, because there are only 400,000 or so of them. If you do grant self-government to a series of bodies, then you allow them to determine themselves within their own province...If you say that the citizens of the Territory are immature—and that means that perhaps the citizens of Tasmania are just slightly more mature and the citizens of South Australia perhaps a little bit more mature—by all means do so, but that means that you should not be passing self-government acts.

Of course, His Honour was nevertheless widely regarded as a very measured and balanced judge and careful in his remarks. To which end, on the limits of the legislature, he also had this to say, and I quote from page 36 of the Report on the Right to Silence, from March 2002:

A further reason for discouraging the presentation of such legislation in the Northern Territory is based on practical financial considerations. Assuming the Territory parliament were the first to enact such legislation there would be no doubt that it would be subject to at least one, and more likely, several, challenges to its validity, its precise meaning and its constitutionality. Such challenges would invariably end up in the High Court accompanied not only by counsel for the Territory and the appellant, but also no doubt, by a galaxy of legal talent seeking to intervene on behalf of various States or interested parties. The subsequent expense for the Territory would be enormous, and while this committee has no desire to discourage legislative pioneering, there may be better causes for the Territory than to lead the way in an expedition which may well prove to have the same frustrations and expenses as that undertaken by Messrs Bourke and Wills...

Hon Austin Asche was truly a gentleman and a scholar. The NT was blessed to be gifted by his legal talents. His life was one of exemplary service in the judiciary but also the military, as an Administrator and as an educator. A separate speech adjunct to this one might have reflected on his contributions to our local university, as Chancellor amongst other things.

He was a public servant of the highest order, the calibre of which is seldom found and unlikely to be replicated. His memory will be cherished by all who were privileged to know him. His example of leading with humility, grace and substance will continue to guide. Verily to God we belong, and to Him we shall return.

Vale, Austin Asche.

J DAVIS (Johnston): Madam Speaker, I pay my respects to Hon Austin Asche AC, KC and acknowledge his family and friends in the Chamber. I send my love to all those who feel his loss.

I met Austin many times in many different contexts, and he was always warm, wise, charming and entertaining. He was one of a kind who contributed so much to the Northern Territory.

I will read some words from his and my friend, Russell Goldflam. Russell shared his words with me, and they capture Austin far better than I can, so I asked his permission to share them here:

'Dear Austin,

'Ninety-nine years of life, 999 years of wisdom and the effervescent ever-inquiring enthusiasm of a nine-year-old lad. I only knew you for the final quarter of your century, a mere 25 years of scholarship, leadership and friendship. I loved your strict compassion, your eccentric orthodoxy, your casual erudition and your inexhaustible store of story, trivial and profound. You ushered me through secret doors to Shakespeare and Dickens, to your far northern forebears and their ancient sagas, to the civilised wilds of the Savage Club but most of all to the law, both common and uncommon.

'Thank you.'

I join with Russell, and so many others who are close with Austin and are feeling his loss, in sending love to Wendy, who has been so devoted in his last leaner years, and expressing condolences to all his family and friends.

Ms CAHILL (Trade, Business and Asian Relations): Madam Speaker, I rise to speak on behalf of me and my husband, Professor Len Notaras AO, in memory of Hon Austin Asche AC, KC.