

1977-1989

THE

NORTHERN

TERRITORY

LAW REPORTS

THE AUTHORISED REPORTS OF THE DECISIONS OF
THE SUPREME COURT OF THE NORTHERN TERRITORY

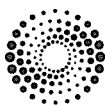
EDITOR-IN-CHIEF
CAMERON FORD

VOLUMES 37-38

THOMSON REUTERS

2019

REPORTERS
JORDAN ENGLISH
CAMERON FORD
ELOISE GLUER
TRISTAN LOCKWOOD
DANIEL RYAN



THOMSON REUTERS

© 2019 Thomson Reuters (Professional) Australia Limited

ABN 64 058 914 668

Lawbook Co.

Published in Sydney

© The Northern Territory Council of Law Reporting Inc

Printed by Ligare Pty Ltd, Riverwood, NSW

ISSN 1038-9237

THE COUNCIL OF LAW REPORTING FOR THE
NORTHERN TERRITORY INC

CHAIRPERSON

THE HONOURABLE JUSTICE GRAHAM HILEY RFD

EDITOR IN CHIEF

CAMERON FORD

EDITORS

COLLETTE DIXON

WOJCIECH KARCEWSKI QC

TAMSIN LEE

DR DAVID PRICE

SECRETARY

CRAIG SMYTH

PUBLIC OFFICER

FRIEDA EVANS

TREASURER

MATTHEW LITTLEJOHN

SUPREME COURT OF THE NORTHERN
TERRITORY OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

CHIEF JUSTICE

THE HONOURABLE JUSTICE WILLIAM EDWARD STANLEY FORSTER
(appointed 1979; retired 8 February 1985)

THE HONOURABLE JUSTICE KEVIN FREDERICK O'LEARY
(appointed 12 September 1985; retired 31 July 1987)

THE HONOURABLE JUSTICE KEITH JOHN AUSTIN ASCHE AC
(appointed 17 August 1987)

ACTING CHIEF JUSTICE

THE HONOURABLE JUSTICE JAMES HENRY MUIRHEAD AC
(8 February 1985 to 12 September 1985)

JUDGES

THE HONOURABLE JUSTICE JAMES HENRY MUIRHEAD AC
(retired 27 September 1985)

THE HONOURABLE JUSTICE RICHARD CHARLES WARD
(appointed 27 September 1974; died 24 November 1977)

THE HONOURABLE JUSTICE JOHN LESLIE TOOHEY AC
(appointed 1977; retired 1982)

THE HONOURABLE JUSTICE JOHN FOSTER GALLOP AM RFD
(appointed 3 April 1978; retired 4 May 1982)

THE HONOURABLE JUSTICE JOHN ANTHONY NADER
(appointed 2 April 1982)

THE HONOURABLE JUSTICE WILLIAM JOHN FRANCIS KEARNEY CBE
(appointed 3 April 1982)

THE HONOURABLE JUSTICE KEVIN FREDERICK O'LEARY
(appointed 1983)

THE HONOURABLE JUSTICE MICHAEL DAVID ANDREW MAURICE
(appointed 21 September 1984; resigned 30 January 1988)

THE HONOURABLE JUSTICE PHILLIP JOHN RICE
(appointed 8 March 1985)

THE HONOURABLE JUSTICE KEITH JOHN AUSTIN ASCHE AC
(appointed 14 April 1986)

THE HONOURABLE JUSTICE BRIAN FRANK MARTIN AO MBE
(appointed 12 October 1987)

THE HONOURABLE JUSTICE DAVID NORMAN ANGEL
(appointed 8 May 1989)

ADDITIONAL JUDGES

THE HONOURABLE JUSTICE EDWARD ARTHUR DUNPHY
(1961-1979)

THE HONOURABLE JUSTICE ALBERT EDWARD WOODWARD AC OBE
(1972-1979)

THE HONOURABLE JUSTICE ROBERT JAMES ANNING FRANKI
(1972-1986)

THE HONOURABLE JUSTICE JOHN BERNARD SWEENEY AO
(1976-1979)

THE HONOURABLE JUSTICE PHILLIP GEORGE EVATT DSC
(1976-1987)

THE HONOURABLE JUSTICE ROBERT JAMES BALDWIN ST JOHN
(1976-1979)

THE HONOURABLE JUSTICE FRANCIS GERARD BRENNAN AC KBE
(1976-1979)

ACTING JUDGES

THE HONOURABLE JUSTICE JAMES BOYD KEITH WILLIAMS CBE

(appointed 26 February 1982; retired June 1982)

THE HONOURABLE JUSTICE KEVIN FREDERICK O'LEARY

(1982-1983)

THE HONOURABLE JUSTICE JAMES HENRY MUIRHEAD AC

(appointed 2 February 1987; retired 2 February 1988)

ATTORNEY-GENERAL

DURING THE CURRENCY OF THIS VOLUME

THE HONOURABLE PAUL ANTHONY EDWARD EVERINGHAM AO MLA

(1 July 1978 to 30 November 1982)

THE HONOURABLE JAMES MURRAY ROBERTSON MLA

(1 December 1982 to 20 December 1984)

THE HONOURABLE MARSHALL BRUCE PERRON MLA

(21 December 1984 to 28 April 1986)

THE HONOURABLE DARYL WILLIAM MANZIE AM MLA

(29 April 1986 to 29 November 1992)

FOREWORD

This anthology of decisions of the Supreme Court of the Northern Territory and of the Court of Appeal and Court of Criminal Appeal during the period 1977-1989 has been a long time coming. It is now over 20 years since Austin Asche, the Court's third Chief Justice, read all of the unreported cases in the library in order to choose which were worthy of publication in this volume, which is designed to bridge the remaining gap between the *Northern Territory Judgments* covering 1917-1976 and the current *Northern Territory Law Reports* commencing in 1991.

On looking through the index of cases, it is amazing that, notwithstanding the passage of so much time, so many of them are still important and referred to today. This is especially so with judgments of single justices. It is often said that single judges' decisions are usually forgotten after a few years. There are wonderful exceptions where such old cases have survived, such as Hawkins J's classic in *Carlill v Carbolic Smoke Ball Co* which is now over a century old; or Forster J's decision in *R v Anunga*, now rapidly marching towards its half century. But, in this anthology, there are quite a few which have survived to be referred to with approval on a regular basis, such as *Sesar v Haymon*, *Lackersteen v Jones*, *M v Waldron*, *Jabarula v Poore* and *Griffiths v Errington*, as well as several others, even though these cases are now between 30 and 40 years old.

Of the decisions of the Courts of Appeal, *Mobasa Pty Ltd v Nikic*, *R v Bird* and *Green v The Queen* are still regularly cited despite their age; although I accept that longevity is not quite so unusual with decisions of Full Courts or Courts of Appeal.

Some of the decisions no longer have the same degree of relevance due to the fact that the statutory framework which was at the core of the decision has since changed. Even so, many of these are useful in their own right as examples of legal reasoning based on principles of statutory interpretation. Others, such as *Re Convictions of Chamberlain*, are not only of interest to legal historians, but to practitioners concerned with fundamental legal theory and jurisprudence.

This is an important volume, which not only fills the reporting gap, but will provide a useful tool for many years to come.

The Honourable Justice Dean Mildren AM RFD
Acting Judge
Supreme Court of the Northern Territory
July 2019