

Police-run civil liberties blown away by a cyclone!

Barrister John Waters could have stepped down from the court, and breasted many bars as a working journalist in the mid-1970s, judging by his lively and evocative account of the formation of the NT civil liberties movement:

In the waning months of 1974, without a single progressive member in the new Territory Assembly, the establishment of a Northern Territory Branch of the Australian Council for Civil Liberties seemed like a very good idea.

I had been at the inaugural meeting of the South Australian branch called some years before. On that occasion a committee was pre-prepared. It was made up of the usual collection of genial academics and trade union officials of the left persuasion. Everything went smoothly in Adelaide, how could anything go wrong in Darwin?

Any conspiracy of the libertarian left in Darwin involved about three telephone calls. A small general meeting would be called. A small advertisement in the Northern Territory News would serve to summon the faithful. Brown's Mart (right) was booked and the advertisement appeared.

(But) in addition to the anticipated four or five lefties, school teachers and academics, the walls of Brown's Mart were lined with about 45 police officers and police cadets. They had the numbers. They looked mean and sounded angry... Apparently the existence of the Council for Civil Liberties was an affront to police liberties. We convening officials were quickly removed from the stage... The police and their allies nominated a committee consisting of police officers.



I rose from my chair – now at the back of the room – to point out that it was important that the new interim committee draft a constitution and report back. I suggested that we should adjourn the meeting to, say, February the 14th 1975 to the same venue. This would allow the interim committee time to attend to this weighty matter. The newborn civil libertarians in charge of the stage thought this a reasonable next step.

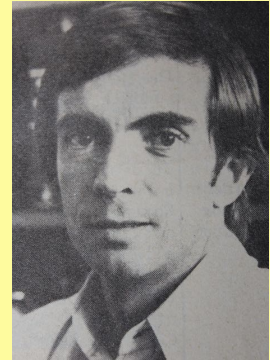
The newly elected committee did not see my helpful suggestions for what they were, a standard tactic adopted in guerilla warfare and factional politics since time immemorial. When outnumbered maintain discipline, retreat and fight another day... Almost Clauswitzian really...

Cyclone Tracy blew the roof off Brown's Mart on Christmas Day 1974. On the 14th of February 1975, without sending out reminders to the few thousand citizens left in the

town, four or five of us¹ attended the adjourned meeting of the Northern Territory Branch of the Council for Civil Liberties. The meeting was held in the ruins of Brown's Mart at the appointed time. In the unlit gloom we formally adopted the constitution we had brought to the earlier meeting. From our number we elected the new committee. The Council was up and running.

No police officers were in attendance to supervise the orderly transfer of power.

** Barrister J.B. (John) Waters (right, pictured in 1980) was appointed QC by then-NT Chief Minister Shane Stone on the same day in 1998 that Stone elevated himself to QC ("because he could", Mr Stone said, having never practised at the Bar!) Invited to a celebratory champagne in the CM's office, Waters walked out.² He stood for the Labor Party in the seat of Northern Territory in 1974, 77 and 80. He, Steve Southwood QC and Jon Tippet QC founded James Muirhead Chambers in Darwin in October 1990, when there were only about nine barristers in the NT. In recent years, Waters served two terms on the Board the Museum and Art Gallery of the NT.*



John Tomlinson was for a long time one of the mainstays – secretary, co-organiser with Rob Wesley-Smith – of the NTCCL. Here's how he described the formation events, as recorded on the *Little Darwin* blogspot in July 2012:

Three months after the initial meeting of the Council of Civil Liberties, the police officer who had been elected interim secretary placed an advertisement in the NT News declaring the planned meeting of the CCL had been abandoned due to the cyclone. But at the appointed hour of 8pm a small band of the originators and Tom Pauling, later the Administrator (of the Northern Territory), who had been elected to the Council's interim executive, entered the rubble-strewn ruins of Brown's Mart (the agreed site for the subsequent meeting) and a motion was moved thanking the interim committee for their efforts and disbandening (sic) them. An election of new office bearers was then held.²



Brown's Mart...as it was on the day of the inaugural meeting of the NT CCL.

¹ Those known to be present were John Waters, John Tomlinson, Tom Pauling (later to become the NT Administrator) and Robert Wesley-Smith.

² Campaigning for the Oppressed: http://littledarwin.blogspot.com.au/2012_07_01_archive.html

The meeting decided to have rotating presidents, a different one at each meeting, but elected Robert Wesley-Smith as permanent secretary. He became the mainstay of the organisation immediately, and remained so as long as it was active.

These colourful stories comprise the 'creation myth' of the formal civil liberties organisation in Darwin and the NT. But we actually have a most reliable and unlikely source confirming the tales: Alan Kohler who, 50 years later in 2015 is the guru of the ABC TV nightly news coverage of financial affairs, was a young reporter back then on the *NT News*. Here – illustration – is what he wrote:

Direct action

Little Darwin blogspot has a tale of direct-action opportunities for restoring rights and ensuring civil liberties which could be taken in "direct action" days in the aftermath of the cyclone in early 1975:

After Cyclone Tracy, former Lord Mayor of Brisbane, Clem Jones, was appointed El Supremo of the Darwin Reconstruction Commission. There were undoubted sighs of relief among senior staff at the Welfare Branch when (John) Tomlinson took leave from the public service to work as the Social Planner with the Regional Council of Social Development (RCSO), which was part of the Australian Assistance Plan. One day, a member of staff, Kass Hancock, asked him to go to the handover by Jones, to RCSO, of a demountable office in Casuarina. The speeches were mercifully short, much to the relief of several senior Commission staff.

FIERY START FOR LIBERTY MOVEMENT

b/ ALAN KOHLER

A fiery public meeting last night elected a steering committee to establish a Council for Civil Liberties in the Territory.

The committee consists of five police men, one special magistrate, one barrister and one solicitor. The seven members were elected from 18 nominees, after a motion that all those nominated form the committee, was defeated on a show of hands.

It is understood that a majority of those present at the meeting were members of the police force.

Mr John Tomlinson, a Darwin social worker, said after the meeting he was "more than convinced the Territory needs an independent council of civil liberties if 64 members of the Police Force are willing to devote a whole night to making sure that no public participation could occur at the meeting."

The man elected chairman of last night's meeting was Police Inspector Laurie Foster, and the secretary was Mr Tom Pauling, a local barrister. Both were also elected

to the steering committee.

Before the elections, a motion was carried that the committee be an interim body, and concern itself only with formulating the objectives and constitution of the NT Council of Civil Liberties.

A second meeting is to be held, on February 11, to receive a report from the committee, consider a constitution, and elect permanent office bearers for the council.

It is expected that among the office-bearers will be social welfare officers, legal representatives, policemen and members of the Legislative Assembly.

The members of the steering committee elected last night are: Mr Tom Pauling; Mr Neil Halfpenny, solicitor; Mr Sijas Roberts, special magistrate; Inspector Foster; Constable Llewellyn; Constable Godley; Constable Dolkins; and Constable Royen.

A statement issued by "a group of Darwin

people" who organised the meeting said: "We are not there to cause trouble or overthrow the system or to make life difficult for anyone who does his job."

The statement said the group consisted of "businessmen, unionists, housewives, doctors, lawyers, journalists, social workers, local politicians, clerical officers, students, laborers, teachers and clergymen."

"There are all sorts of people involved and so there will need to be if the organisation is to do its job and have any credibility," it said.

LAN

Report of the meeting: the young reporter in 1974 is in 2016 ABC TV News' financial guru, and runs his own financial advisory business.

Jones said something like, "Well that was short and sweet, we have an hour or so till the next appointment". Tomlinson, one of whose brothers-in-law had had a lot to do with Clem, suggested adjourning to the Marrara Hotel for a cold beer. After a couple, Clem asked, "Well, while we're here, is there anything else we can do for you?" Tomlinson replied, "You could knock down the cellblocks of the Essington House remand centre." When asked why, Tomlinson told of the night (a) young girl had nearly died and a couple of other horror stories he had heard about the place from staff who had worked there. "Where is it?" Clem asked. "Just across the road" several people chorused. The group piled out of the pub and drove the 150 metres to the remand centre. Most of the open part of the centre had been badly damaged but the cellblocks were still intact.

Jones found a place to sit about 80 metres from the cellblocks and dispatched his senior engineer and senior architect to inspect the site. Clem demanded more details of the young people who had been locked up there and the reasons for their incarceration. About 20 minutes later the engineer and architect returned and announced that whilst the main building would need to be demolished the cellblocks were structurally sound but would need re-roofing. Clem exploded: "Structurally sound, my arse! I can see significant cracks in the walls from here." Engineer and architect beat a hasty retreat in the direction of the cellblocks, returning five minutes later, confirming they too could now agree there were structural faults and recommended immediate demolition because of the safety hazard the site presented. Clem pointed to the completely intact gymnasium and asked "Do you want that knocked down too?" Kass replied, "No, we plan to hold dances there for young people."

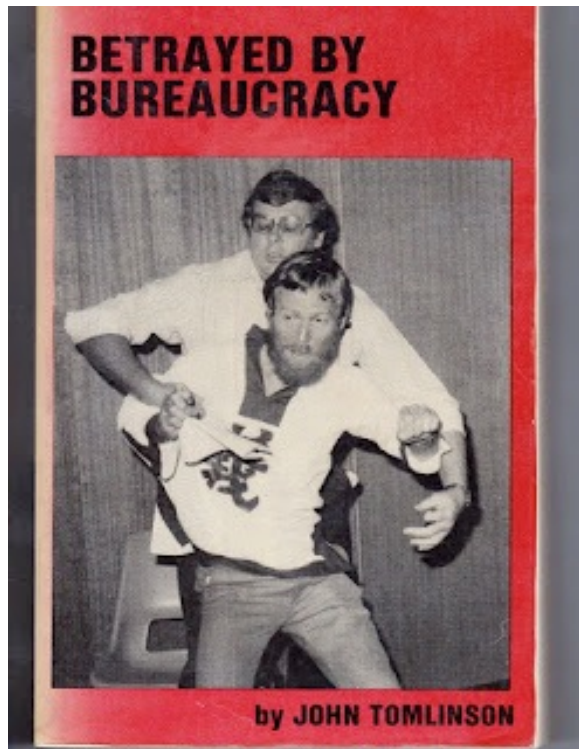
One of the workers in the RCSD, Clive Scollay, was using low cost video cameras to help people get on with life after the cyclone. One afternoon there was a rumpus on the footpath in Smith Street opposite the RCSD office. A police officer had an Aboriginal youth on the ground. Tomlinson went down and remonstrated with the officer when it appeared to him that unnecessary force was being used. Clive filmed the event from the RCSD office.

The Council of Civil Liberties took the videotape to the Commissioner of Police and complained, alleging excessive use of force. A copy of the tape was kept in the RCSD office. Some months later the office was broken into and apart from the petty cash tin the only other thing that was identified as missing was a hand-drawn poster behind the lunch room door calling for an experienced sapper unit to do some explosive operations in the uranium province. That poster was in Tomlinson's handwriting. It was assumed by some that the break-in was the work of ASIO or the Special Branch.

Some years later, when the videotape was handed back to the Council of Civil Liberties, Tomlinson, in his capacity as secretary, asserted the tape had been doctored. Considerable Press interest was aroused, the Police Commissioner claimed to have been criminally libelled. Tomlinson arranged to get a copy of the original

tape sent up by Clive Scollay. Tomlinson agreed to play both tapes to the police and arranged to have a journalist and a cameraman from *NT News* at the viewing .

After the screening, the police produced a search warrant, which Tomlinson read and then refused to relinquish, demanding a copy be given to him. A struggle ensued which the cameraman dutifully recorded and the front cover of next day's *News* was entirely devoted to photos of the struggle.



Left: Tomlinson 'helping police with their inquiries'.

In a book some years later, Tomlinson used the photos with the caption "showing the author helping the police with their enquiries". [Both copies of the videotapes were the same. For those who believe in conspiracy stories and UFOs, it was said that, at the time of the break-in of the RCSD office, the doctored tape was inserted in the box containing the original footage, which was removed. Richard Nixon would surely not have had to resign had there been such skilful plumbers working for him, instead of the Watergate amateurs.]

Tomlinson was charged with a number of offences, but barrister Geoff James took an action in the Federal Court that found the

search warrant had been insufficiently precise and police had exceeded their powers. The charges were eventually dropped.

Tomlinson became one of many Darwin activists who campaigned against the Indonesian invasion of East Timor. He was involved in the 1976 attempt to take a boatload of medical supplies to East Timor on the vessel *Dawn*. Intercepted by the Navy, those aboard were skipper Manolis "Manny" Mavromatis, Darwin agronomist Robert Wesley-Smith, James Zantis, of Bondi, Sydney, and Harold Clifford Morris, of Deniliquin, NSW. Wesley-Smith had asked Tomlinson to take some of the supplies down to the Quarantine Station boat ramp to rendezvous with *Dawn*. Tomlinson's car was being serviced, so he used the RCSD Kombi van to deliver the supplies. That night the *Dawn* was intercepted by a Navy boat as it attempted to leave Darwin Harbour and all four on board were arrested.

Tomlinson was arrested the next day and charged with aiding, abetting, counselling and being concerned with the illegal export of goods and being on Quarantine Station without permission. The late David Scott, Director of Community Aid Abroad, said it was "about time a social worker was charged with counselling." Customs seized both the vessel and the RCSD Kombi van.

Darwin Community College

Little Darwin blogspot continues its coverage of the life of John Tomlinson...

In May of 1977, Tomlinson, a lecturer at the DCC, was the centre of a major argument about academic freedom when it was alleged he advocated sabotage in a course for the Associate Diploma of Community Work. Police were sent to the college without prior consultation with the acting principal. Once again he was the subject of lively debate in the media and parliament. Many students from this course did field placements at the Unemployed Workers' Union and Coalition of Low Income Workers.

For a couple of years Tomlinson published a small monthly magazine entitled *Farewell to Alms*, a play on the Hemingway novel. As its name suggests, he wanted to see the welfare system disassociate (sic) itself from the poor law charity system and embrace universal income guarantees such as a guaranteed minimum income. In one issue, Tomlinson wrote an article in which he alleged that the Director of NT Welfare was murdering Aboriginal children by severely limiting their access to welfare payments. He states his luck with the law ran out at this point and he became the first person after Frank Hardy to be charged with criminal libel in Australia.

Tomlinson and Darwin lawyer, Geoff James, flew to Sydney to see a barrister who pointed out that, among other things, in order to prove "murder" it had to be shown that the accused had by his or her actions committed an act that directly led to the death of a specific person. Tomlinson's arguments about statistical increases in Aboriginal babies dying simply wouldn't stand muster. The Sydney barrister urged Tomlinson to make a complete retraction.

Geoff James took him across the road to a pub and said "Did you enjoy that? I hope you did because that hour just cost you \$1200 and if we get him to defend you then you are looking at a minimum of \$20,000. What did your last book cost to print?" Tomlinson issued the apology, the criminal libel charges were dropped.

In a later edition of *Farewell to Alms*, Tomlinson alleged that by making it hard for parents to get welfare payments, it resulted in increasing numbers of Aboriginal children dying in remote parts of the NT. He was sued for libel and an out of court settlement of \$5000 was reached.

In 1982, Tomlinson published *Social Work: Community Work/Betrayed by Bureaucracy*. In 1983, after sitting through an inquest into the death of an Aboriginal prisoner who had escaped from Darwin Hospital's psychiatric ward, was recaptured and subsequently mortally injured, Tomlinson published a play entitled *The Death of Phillip Robertson*. After a reading at Brown's Mart in October 1985 there was an eight week season at the New Theatre, Newtown, Sydney, beginning in December 1988.

In 1983/84, the Darwin Community College (DCC) commissioned an external review of the Community Work course and, despite the review recommending its continuation, the DCC executive committee – Director Joe Flint and Chairman, Nan Giese – lowered the boom. Tomlinson was made redundant in late 1985.

In 1986 he studied full-time for his PhD. at Murdoch University, his marriage to Clare breaking up late that year. His degree was finally awarded in 1989. In 1987 he was appointed Director of the ACT Council of Social Service and lived in Canberra until 1993 when he was appointed Senior Lecturer in Social Policy and Community Work at the Queensland University of Technology. Dr Tomlinson retired from the QUT position in 2006.

Little Darwin blogspot says that he now “writes and does his bit to urge governments and oppositions to adopt universal income support policies, to end the NT Intervention and treat asylum seekers humanely”. Tomlinson has lodged his papers³ with the University of Queensland. There he provides his own short biography:

John Tomlinson is, among other things, a social worker, poet, political activist, amateur fisherman and brewer of fine coffee. He has campaigned since the 1960s for Aboriginal and workers' rights and has been a persistent advocate for people living under colonial rule throughout the Asia-Pacific region. His involvement in the campaign for an independent East Timor began with the Indonesian military's invasion of that territory in 1975 and continued throughout the 24 years of military occupation.



The NTCCL between 1975 and 1981

Rob Wesley-Smith, after researching his personal records, provided this rundown of what the council was concerned about during its initial, flourishing period:

Civil liberties involve the right to personal freedom consistent with the rights of other individuals and society as a whole. Usually included are such things as rights to freedom of speech, publication, assembly and organisation, to information, to enjoy the environment, freedom from arbitrary discrimination and deprivation of liberty of all kinds. Some civil liberties are clear-cut. Others require careful definition often in specific circumstances, and then action to ensure these liberties. That is where a civil liberties group is needed, Rob says.

A small group of us met on 14 February 1975 to form the NT Council for Civil Liberties – it was a big week: in the same seven days, Margaret Thatcher was elected to lead the UK Conservative Party, and Australian band AC/DC released

³ Fryer Library of the University of Queensland (UQFL460) John Tomlinson Collection)

its first album. My memory of who did what in relation to organising things is different from the others...but it doesn't really matter which of us called the meeting, moved the motions, etc: it was a group effort of a very small group, that's for sure.

My memory is that I rang around to selected friends to get a gathering going. I don't think the police remembered to put an ad in the paper, as John Tomlinson recalls, but they may have – the officers who were left in Darwin were up to their armpits in police work at the time.

At the formation meeting, we sat on upturned bricks or stones, being part of the walls that had collapsed due to Cyclone Tracy. I had prepared a few notes, or plans, for the way ahead. We thanked the cops, noted their unaccountable absence, set out membership details, and I was elected secretary. It was also my idea, I think, to have the chair of the next meeting elected or nominated at the previous meeting, etc, to rotate the workload around. As secretary, and having a non-permanent president, it fell to the lot of the secretary to keep things going. It was when John Tomlinson had a burst as secretary that all hell broke loose with his accusations against the cops re the film (as he has recounted, above).

Though formed, with Darwin in a state of chaos because of the cyclone, the NTCCL only became active later that year. People I remember from that time who were stalwarts of the organisation were Maggie Kent, Marion Riley, Clare Tomlinson, Yan Tocharcek and the redoubtable Vai Stanton, the final secretary.

Over the next six-to-eight years, we were involved in issues of law reform, minority rights, alcohol and other drug legislation and institutional needs, Aboriginals and the judicial system, welfare, accommodation and tenants' rights, environmental issues, East Timor in relation to Australia's approach, freedom of information, police role and behaviour, privacy, welfare/legal aid/prisons, environment, the UN Declaration on Human Rights, and so on. As well, members followed up individual cases, and gave evidence to Australian Law Reform Commission hearings and so on.

The Council prepared a schedule of areas of NT laws needing reform and urged legislators to implement reforms. They also called on legislators to resist calls to re-criminalise vagrancy and drunkenness. One submission was a major paper on the new Mental Health Bill, arguing for the involvement of an independent committee. Another called for an NT Bill of Rights.

Recognising that Darwin had a very great drug problem, the Council called for a sensible and scientific treatment of various drugs under the law. It asked the government to provide improved facilities for people held in protective custody until drying out centres were established. The Council was appalled by the severity and deprivation of civil liberties inherent in the proposed Drug Bills: it should not proceed, the Council said. The NTCCL supported decriminalisation of marijuana for personal use, and gave evidence at the Stewart Royal Commission in 1981-83 into Drug Trafficking.

The Council accepted the need for random testing of alcohol in drivers, as long as it was fairly applied.

Why we formed the NTCCL

“We felt there was a great need for such activity in the NT for us initially in the post-cyclone situation, and then with the rapid change and evolution following self-government in 1978,” Rob Wesley-Smith said in an interview 40 years later. “The NT has a unique population structure, with a domination by civil service bureaucracies. Membership of the NTCCL was open to all persons of and in the NT who supported the aims, subject to acceptance and payment of fees.” – Rob Wesley-Smith



Freedom of Information: the Council called on the NT Assembly to routinely make more information available, including proposed legislation prior to sittings, and to open price regulation hearings. It asked for improved community consultation before bills were passed.

Over 1976 and 1977, we campaigned that police and public servants should be identifiable, and for better local ABC facilities and programs. When it came to the biggest issue in half a lifetime, the Ranger Uranium Environmental Inquiry (the outcome was known as the Fox Report), the NTCCL did not make a formal submission, but Rob Wesley-Smith and many other activists made personal submissions. The Council did argue that public servants should be free to give evidence before the Ranger inquiry, arguing on the basis of what happened to Rob:

“The judge warned the NT Administration not to take action against me and public servants, as I had severely embarrassed it by pointing out some home truths. The Judge (Fox), if asked, might allow those who had given evidence to ask questions of other witnesses. I did so on five occasions, one of those leading to Fox telling the NT Administration to go away and prepare their submission in accordance with the Royal Commission rules. I was not Mr Popularity with the admin and the head of my Department of Agriculture.”

“So, yes, I generated some NTCCL motions in support of us struggling public servants, doing our bit for democracy and public consultation,” Rob said in 2013.

Always, the Council was a strong supporter of Aboriginal and minority rights: the NTCCL supported the Yirrkala Council in attempts to control access to their land. “We argued for setting up a positive program for greater understanding and appreciation of different cultures in the NT for all and especially public servants and service personnel,” Rob Wesley-Smith said.

The NTCCL called for a Royal Commission into the relationship between Aborigines and the entire judicial system. It strongly asserted the right of people to be involved in the decision-making process involving their lives. It supported the rights of Aboriginal communities against mining interests, but it wasn’t blind to serious problems -- which

remain unsolved to this day – in Aboriginal communities in the NT. Here is a media release issued by the NTCCL on 9 February 1982:

At a general meeting yesterday the NTCCL agreed to a statement in a very complex and serious issue which has made the news recently in a rather one-sided manner, and asks that the statement following is used by media as far as possible as a totality or not at all.

Regarding alleged forcing of young girls to marry men not their choice:

The NTCCL believes the situation is complex, and must be approached with a perspective taking into account both Aboriginal culture and European culture.

The main issue is not, primarily, arranged marriages, as these apply to many cultures. It is the alleged forcing of these or any other such relationships against the strong desire of one partner. Any person in this NT community should be entitled to the protection of the law against serious physical assault and violence, and criminal behaviour by anyone should not go unprosecuted.

A major problem is that concepts of physical and mental violence differ between and within both the various Aboriginal and the various European cultures. It should not be assumed by anyone as a matter of self-righteousness that their own system, taken as a whole, is superior, nor that any one culture has a mortgage on love and concern.

Nevertheless, the NTCCL believes there is scope and urgent need for a coming together of cultures in the NT to discuss how the best aspects of the cultures can be encouraged, and the poor aspects discouraged, leading to a greater codification of procedures and rights.

In relation to the “promise system” we understand that this is culturally based. However in many Aboriginal communities and families, strong personal preference and love of an individual is allowed to take precedence over a promise. To assist wider understanding and recognition of this point, it would be useful to sponsor meetings between Aboriginal communities to discuss these matters.

We are aware of the Law Reform Commission discussions and reports on Aboriginal Customary Law. This is a good start, and needs to continue, but is not enough. Discussion within and between Aboriginal communities, and with the government and communities, is needed too, especially in light of changing society and its many influences including education, travel and alcohol.

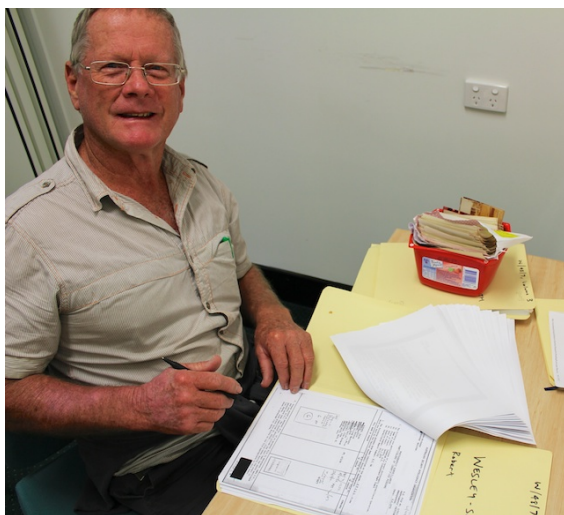
The police are caught in a very difficult situation with domestic violence in any culture. Violence, often exacerbated by alcohol, is too high in our society today. We encourage attempts at sensitive and compassionate understanding, yet warn that individual rights must be protected when necessary.

– acting secretary NTCCL, RN Wesley-Smith

The following were NTCCL policies/positions:

Police: The Council expressed concern at the inconsistencies and delays in people getting bail, and called for an open judicial inquiry into the police force.

Privacy: Files held by governments, including ASIO files, should be open to inspection by the people they concern. The Council requested the public service commissioners to instruct various registries to refrain from opening private mail without permission.



Left: Robert Wesley-Smith, pictured in 2013 at the National Archives in Canberra, reviewing his own ASIO files for the first time. The 30-year-old files covered the period he was active in the NTCCL, and in the East Timor movement's early days.

Welfare/Legal Aid/Prisons: The Council supported the 'lone parent' pension, backed the continuation of Aboriginal legal aid, published a major statement of administrative changes needed in jails, including establishing a prison farm, and condemned the placement of listening devices in cells.

Environment: Council urged a moratorium on mining until safety could be assured, opposed the cutting of funding to the environmental council, and strongly opposed the proliferation of nuclear weapons.

East Timor dominates debate and actions

East Timor was a prime issue which the Council campaigned on. Mirroring Rob Wesley-Smith's particular and personal concerns, the NTCCL called for proper investigation into the deaths of five Australian journalist at Balibo, and deplored the Australian government's acceptance of Indonesia's invasion of East Timor.

Concerns over East Timor – Timor Leste – drained resources of time and energy from the NTCCL to some extent. Rob Wesley-Smith in particular became more and more involved with the ET campaign, where the very life of a neighbouring country just over the horizon was at risk, and the lives of its people were being assailed daily.

But, as the NTCCL declined in the 1980s, Rob recalls, it was a time of change generally as individual groups were established to lobby specifically for Aboriginal rights, and for civil rights, mainly out of the legal eagles in town. The advantage of a civil liberties organisation is that it can cover the field of generally just about any human endeavour: that, of course, is also its disadvantage, as frequently groups splinter to take on more tightly-targeted battles. There were – and seemingly always are – plenty of liberties and rights battles to be fought in Darwin.

Darwin...dogged by controversial media

There is a tale told of the time Rob Wesley-Smith had the media barking up the wrong tree!

In response to reports that Indonesia had used napalm in its aerial bombing campaign, Wesley-Smith advertised that he was going to burn a dog in Raintree Park, in central downtown Darwin. This attracted considerable publicity. On the appointed day, 14 July 1978, Wesley-Smith arrived at the oval with a dog hidden under his shirt. Also present was a large crowd of curious onlookers, animal rights activists, members of the media, police and the fire brigade. The police had earlier warned Wesley-Smith that he would be arrested if he attempted to carry out his plan. When he pulled the dog out from inside his shirt, it turned out to be a fluffy toy dog. He then declared that people were prepared to be outraged at the burning of a dog, but not of the burning of humans in East Timor by napalm. While there was relief from the animal rights activists and disappointment from some of the onlookers, who had brought their cameras along to record the occasion, the goal of the publicity stunt had been accomplished: Wesley-Smith had raised awareness of Indonesia's actions.

NOTE:

When John Tomlinson left Darwin at the end of 1985, he had worked as a social worker with the Welfare Branch of the Department of Aboriginal Affairs until 1977 and then taught community work at the Darwin Community College until 1985.

Tomlinson had been involved in Indigenous homelessness and land rights issues since the early 1960s.⁴ He had supported the rights of the “long grass” people as early as 1978, when he encouraged a study of Darwin town camps and City Council harassment of Indigenous itinerants, which was conducted by Phillip Marsh, one of his students. Tomlinson’s attitudes over the period of the NTCCL’s operation can be gathered from this piece he wrote in January 2013:

This is the land where in the 1960s and 70s people talked about giving everyone a fair go, where people fought for and expected a fair day's pay for a fair day's work, where

⁴ Homeless and in Darwin - no peace in the long grass <http://www.onlineopinion.com.au/view.asp?article=3885>

social security was accepted as part of the social support system which assisted the elderly, widows, the sick or disabled and those down on their luck. People generally saw unions as the mechanism by which the abuses of the industrial system were controlled. And by 1972 there was a realisation that we had to improve the position in which we had placed Aborigines. It was a time when the Whitlam Government talked about introducing Aboriginal land rights. In 1976, the Fraser Government succeeded in passing the Northern Territory Land Rights Act.

The wealth of Australia and Australians has increased enormously since 1960, yet Australians are now less generous and more suspicious of people who are forced to rely on social security. We really need to ask why it is that clever politicians can induce in us such dark fears that we turn on our neighbours and exhibit so little trust in those our economic system has made redundant.⁵

Tomlinson's full story is fascinating, and the *Little Darwin* blogspot has it nicely encapsulated: for example, his action as a social worker in taking a seven-year-old Aboriginal girl from her white foster parents in Darwin and returning her to her father in the remote community of Maningrida, an action which "reverberated around the world".⁶

Council calls for Chamberlain inquiry

In late 1984, the NT Council for Civil Liberties called for a judicial inquiry into the convictions and sentencing of Lindy and Michael Chamberlain. The *NT News* reported the call on the front page on 30 Nov 1984:

"The council's executive called today for the setting up of an inquiry and the immediate release of Lindy Chamberlain following the inquiry. Civil Liberties Council assistant secretary, Mr Rob Wesley-Smith, said the Territory Government would be expected to set up such a review, along the lines of a royal commission.

"Mr Wesley-Smith said he couldn't make any more comments on behalf of the council, but it was his personal opinion there would be no action taken on the issue until CLP federal candidate Mr Paul Everingham was 'out of NT politics'. He said a lot of evidence had been accumulated since the Chamberlain trial, and it should be reassessed. 'A court is not an inquiry, its a debate. In a royal commission all suggestions can be followed up and assessed', Mr Wesley-Smith said.

"The NT Council for Civil Liberties, a 'group of concerned citizens', was formed in 1975," the *NT News* reported.

⁵ *It's the same the whole world over:* <http://www.onlineopinion.com.au/view.asp?article=13154>

⁶ http://littledarwin.blogspot.com.au/2012_07_01_archive.html

Lindy Chamberlain was released from jail on 7 Feb 1986, five days after a matinee jacket belonging to Azaria – which police said was a figment of Lindy’s imagination – was found near a dingo lair at Uluru (Ayers Rock). Eighteen months after the NT CCL call for an inquiry, the Morling Royal Commission opened on 8 May 1986, and concluded on 25 May 1987 with delivery of his report exonerating her. Behind the scenes, the NTCCL had provided unofficial support to the Chamberlain legal team.

As in many cases of wrongful convictions throughout Australia, a government could have saved itself a substantial slice of a significant compensation payout had it listened to the advice of civil liberties people early in the piece.

The late-84 media release was probably the swan song in public print of the NT Council for Civil Liberties. The East Timor situation began to dominate the lives of the handful of activists in Darwin, and other specialist bodies had taken on issues and campaigns that formerly only a civil liberties group raised.



Switching from civil libertarian to ‘guerilla fighter’ in his own country, Rob Wesley-Smith was frequently in some form of hiding from authorities. Regularly, he “went bush” somewhere around Darwin to use a ‘pirate’ radio to communicate directly with the friends of Fretilin freedom fighters in Dili and the nearby mountainous country.

Here Wesley-Smith is on the mike of Radio Maubere as he and Laurentino relay news and family information both ways.

Barrister brings civil liberties advocate skills to bear

Just as Tomlinson left town, another man who was to ‘move and shake’ in the civil liberties field moved in. Barrister Alistair Wyvill first joined William Forster Chambers in Darwin in 1986, before leaving in 1998 for a decade-long ‘barrister’s holiday’ working in Midlands, based in Birmingham, England.

On returning to Darwin in 2008, the formal civil liberties group⁷ had long died, but there was always a need for someone with a conscience to speak up and out for freedoms. In Wyvill’s case, he could contribute, pro bono, his considerable legal and advocacy skills at the same time.

⁷ officially 30 March 1988 - see letter from HC Crafter, Commissioner for Corporate Affairs, dated 30 Dec 1987 to RD Barrett, 23/386 Tower Road TIWI NT 5792, giving three months warning of being struck off the register/dissolved.

He represented Jose Ramos Horta against the Commonwealth in a case involving constitution law and the external affairs power⁸. The unfairness of the Australian ocean floor grab in dealings with Timor Leste was being argued formally even before the involvement of Australian spies in bugging the TL Cabinet room was revealed nearly 20 years later.

While there may have been no formal civil liberties group, the people who would have been signed up, card-carrying members were mostly fighting the good fight to restore freedom to East Timor/Timor Leste and its people.

In March 1998, Wyvill (photo) was successful in achieving a 2-1 split decision to get two people off disorderly conduct charges for burning Timor Leste flags in Darwin's main street in the case of *Watson v Trenerry (1998) 122 NTR 1 [NTCA]*. The irony is that Wyvill was appearing for Sally Ann Denise Watson and Vaughan Lewis Williams (W&W), accused of disorderly conduct by burning Timor Leste flags, and Tom Pauling QC was appearing for the Crown (the same Pauling present at Brown's Mart, amid the rubble, when the NTCCCL was formed!).



W&W had been convicted in the magistrate's court (whereas co-conspirator, some would say prime agent provocateur, Rob Wesley-Smith, had been acquitted by another magistrate). W&W had lost an appeal before a single judge, the Chief Justice of the NT.

Two of the Full Court appeal, Judges Angel and Mildren, wearing a finely-woven cloak of Solomon, found that W&W were innocent – or at least, not guilty – of the alleged offence, of carrying out “on the footpath and carriageway of Harry Chan Avenue in Darwin a protest to mark the twentieth anniversary of the Indonesian occupation of East Timor”. Harry Chan Ave is one of the main thoroughfares of Darwin.

Judge Angel said:

“The learned magistrate found that what he called “the incident of the flag burning” occurred after what the learned magistrate called “the circular and oval parade”. Twenty flags, soaked in kerosene, were distributed amongst members of the gathering (including the appellants). The flag holders paraded in a circular fashion across Harry Chan Avenue from one footpath to another. In the course of that parade they draped the flags along the ground and at times held them aloft. Thereafter one flag was set alight. The holder of that flag and the identity of who set it alight are unknown. The other flag holders, including the appellants, lit their flags from the burning flag and stood in a circle with the burning flags held aloft and pointing towards the centre of the circle. After thirty seconds or so the burning remnants were dropped or tossed on the carriage-way about one metre or

⁸ *Horta v Commonwealth (1994) 181 CLR 183; 68 ALJR 620, 123 ALR 1 [HCA]*.

so from the curb side adjacent to the Indonesian Embassy. All this occurred in the presence of Police who were present by pre-arrangement with the organisers of the protest and in the presence of a Fire Brigade Unit which was present by prearrangement with the Police. The Fire Brigade extinguished the pile of burning remnants of the flags on being directed to do so by the Police. Protesters then cleaned up the mess.”

The main ringleader, Rob Wesley-Smith, had been acquitted by a sage magistrate after representing himself most eloquently. “The flags weren't ‘soaked’ in kero,” he said in 2014 in an email, “but it had been applied carefully, then a bit more in case, then they were rolled together to look less conspicuous in my car.”

During the Full Court appeal by W&W, barrister for the Crown Tom Pauling was reading some of Wesley-Smith’s cross-examination of Police Superintendent Ey in the magistrate’s court. He paused and said to the judges: “I think he (Rob W-S) may have missed his calling, your honours!” Wesley-Smith says: “When later he turned around and saw me sitting there in the court, he went quite red!”

Darwin was, and is, a small town: all the players knew each other well. Wyvill, Pauling and Wesley-Smith had lunch together. Rob W-S says: “I told Wyvill that Tom Pauling had been my first (or one of my first) lawyers in Darwin. Wyvill caused further embarrassment by saying: ‘Ay Tom, isn’t it always the way, we start off defending human rights, and end up prosecuting them!’”



Pauling QC (pictured at left, and later Administrator of the Northern Territory) must have been practising with a long bow because, as the dissenting judge, Gray, said:

As to the constitutional argument, Mr Pauling put it that the principles expounded in the free speech cases (in the High Court) have no application in the Northern Territory which stands outside the Federal system.

Fortunately, Gray J failed to find the ‘Pauling Pretence’ persuasive, and neither the NT nor the ACT were exorcised from the Australian mainland to a place beyond federal law as a result of the Darwin flag-burning escapade.

However, the question of how much the federal government could or would or should be responsible for territory matters continues to arise, such as in the “Intervention” in the NT by the Commonwealth over Aboriginal welfare issues and land ownership/control in 2007 (and continuing until 2022 at least), and the failure of the Commonwealth to take responsibility for mistreatment of Aborigines by the NT government, when the federal government clearly can intervene on a whim at any time.

During the W&W case, Judge Angel (see photo) made as good a statement of civil liberties and rights in relation to peaceful public protest as has been made in Australia:

The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in a street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of difference and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble, and to associate. ...



In short, peaceful demonstrations and protests (whether by way of procession or assembly) are the lawful exercise of freedoms which, whilst necessarily imposing on others, are tolerated in the absence of associated unlawful acts. Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms to do that which is not prohibited by law.

It is a pity that, at the other end of Australia, the Tasmanian government (of Liberal or Labor persuasion) frequently holds a different view.

Barrister Wyvill has been involved in recent times with major cases involving national implications, such the Green matter, where he acted pro bono in a Full Court appeal⁹. In that case the DPP wanted to recover millions of dollars from Green because he had grown about 20 marijuana plants in a container on land he was leasing on the southern

⁹ *Director of Public Prosecutions (NT) v Green (2010) 201 A Crim R 513 – criminal property forfeiture.*

outskirts of the city, with a view to slaking Darwin's renowned thirst by the addition of a micro brewery.

Green was convicted and sentenced to nine months home detention. When sued by the DPP for the value of all that he owned under criminal property forfeiture laws, Green argued he couldn't be made to pay the value of the leased land, which he didn't own (he was liable for a flat in the suburbs, occupied by a son, and for a bush block he owned out of town). With the help of the NT's famously flexible judiciary, Green and Wyvill basically won the major battle, so much so that in 2014 the NT government introduced an amendment to legislation to overcome the sensible court ruling. Here's what John Elferink, NT Attorney-General (and a Civil Liberties Australia member!), said of the new 'Green' amendment:

"The proposed amendment to the Criminal Property Forfeiture Act will ensure that when an offender commits an offence using property they don't own, the NT Government may seize the offender's assets to the value of that property.... The Northern Territory is the only jurisdiction in the country where a drug trafficker's property can be seized regardless of whether it was directly derived from proceeds of crime..."

In other words, even in legitimate cases like that of Green, a fitter-welder who was not a "Mr Big" of crime, and who was not trying to hide assets, the NT government is robbing the poor to pay the salaries of MPs...or, perhaps, to increase the staff of the Office of the Director of Public Prosecutions.

Modern history...from the 2000s

As Civil Liberties Australia became established, in the mid-2000s, the CLA Board looked to form alliances with people and groups in states which were not being active about civil liberties. From the Northern Territory, through WA and SA to Tasmania, there were no, or few, civil liberties voices being heard. It was a time of draconian legislation, stemming internationally from the '9/11' terrorist aircraft attacks in the US, and nationally from the rise of 'bikie' groups in the drug-and-thug trade.

The CLA Board thought it was important to encourage people to speak out for civil rights – freedoms, liberties – in each State and Territory. In mid-2011, CLA turned its attention to Darwin and the NT. The following report provides a detailed snapshot of how things were at that time

Report: Civil liberties/human rights – NT, June 2011



This is an executive summary of a report on the status/potential of civil liberties and human rights in the Northern Territory. The Board of Civil Liberties Australia determined to evaluate whether it was appropriate to form a distinct CLA group in Darwin. President Dr Kristine Klugman and CEO Bill Rowlings were asked to investigate and report: this

report stems from a period of six months preparing for the visit to Darwin, and 11 days in Darwin conducting 26 separate interviews, in June 2011.

Overview:

Darwin is a frontier town, *“a very challenging environment”*, as one person put it.

The town, like the Northern Territory, is brash, young, enthusiastic. It dislikes authority and over-regulation, which means it should at first glance be ideal civil liberties supporter territory. But “human rights” lacks resonance, we were advised: “fair go” is a better term instead. Darwin and the NT are different from the rest of Australia:

“People are against any regulation affecting ‘Territory lifestyle,’” we were told.

The people we met with were intelligent, committed and dedicated. A small community of aware people mostly know each other well. There’s a need, though, for the threads of individual and organisational initiatives to be drawn together, communicated around a series of connections and networks, to achieve best overall leverage.

The good things that are being done by both government and non-government groups need circulating and publicising, within Darwin and the NT, and nationally. CLA is well placed to help in that regard, because the good people with highly-developed social consciences tend to be over-committed, and any networking that leverages more outcomes for the same effort is likely to be welcome.

And it needs remembering that the numbers are small, and therefore so is the talent pool, particularly among political operatives and the public service. With the best will in the world, Darwin and the NT cannot always attract the best people:

Darwin...It’s become the end of the line, the dustbag of a vacuum cleaner that sucks young refugees from the south and tumbles them around amid the heat and the sweat and the beer until they either settle and find their niche or get spewed back out...

– author Andrew McMillan

The state of the NT...June 2011

The Speaker of the Northern Territory Legislative Assembly, Jane Aagaard, announced in Darwin in June 2011 that the Territory has re-embarked on a voyage towards statehood, aiming to become ‘State 7’ (both the name, and the aim, of the process). The NT wants the same federal representation as Tasmania has, 12 Senators, 5 MPs.

*Speaker Jane Aagaard with CLA President,
Dr Kristine Klugman.*

Civil Liberties Australia expects the NT claim to spark a major constitutional debate on whether/how the Australian parliament can impose special conditions on entry of a new state, or whether a new state must/should/will be admitted under the same conditions as applied when the original states federated.



Is the NT ready to be a state? In analysing the opportunity for a civil liberties organisation is Darwin, the research indicated some clear issues which may need solving before statehood, or certainly require addressing in any transition agreements. They relate to serving the people of the NT, and how the law, 'justice', and human rights/civil liberties now operates in the Territory. In summary, what we found was:

1. The NT Public Service is at a low ebb...which may cause cultural problems

No public service should feel cowed and defeated, particularly when it should be positive and upbeat about possibly heading towards a major change of status, such as statehood. But the NT PS is browbeaten by the 'Northern Territory Intervention'.

The Commonwealth of Australia decided to intervene in the governing of the NT (for shorthand, the C of A action is called the 'Northern Territory Intervention,' NTI) in mid-2007. The federal government took over many Aboriginal matters – health, education, sexual mores, policing, alcohol consumption, welfare, etc. This obviously had a major impact on the 30% of the NT's 230,000 people who are Aboriginal.

But a so-far unrecognised (so far as we can determine) secondary but major result of the NTI was the huge impact it had on those people in the NT public sector who had been managing and delivering Territory Aboriginal programs. Many senior public servants feel emasculated by the way their work – sometimes ground-breaking work, just starting to have effect – was overthrown as worthless and without merit or prospect by the stroke of a Canberra pen. Some comments we heard were:

"The Intervention is a bizarre delusion..."

"What is happening on the ground is ill-conceived."

There is little belief in the NT public service that the NTI by the Australian government continues to be "urgent" and "legitimate". There is an immense sense of deflation and of years of work being wasted, and a hopelessness as to when the NT administration and public service will regain responsibility for managing all of its people.

Many NT public servants had put their hearts and souls into tough, long, extensive consultation and communication two-way with Indigenous communities, and had developed programs that were working. At a stroke, all the positive work the NT public servants had done and were doing in relation to Aboriginal issues was wiped out when the 'big brother' Commonwealth stepped in and took over.

2. The public service culture, at the individual service level, is less than ideal.

We were surprised at the number of people who told us that, in dealing with the public service, the PS culture can be:

*"bullying",
"harassing",
"homophobic",
"closed", and
"not transparent".*

People reported appeal mechanisms lacking or, where they exist, sometimes paid lip service to rather than being properly followed. Of all comments made to us, problems with public service attitude to liberties, rights and plain customer responsiveness were those most raised.

“There has been five or six years of anti-discrimination legislation...but it has not been followed by the public sector...there are issues with sex, race and disability...” (underline added)

“The NT Government is bi-polar. It has the right rhetoric, but often does the opposite...”

In a small jurisdiction like the NT, a few people can have a major influence. It may be that there has been a handful of people in strategic positions who cause this perception.

From the comments we heard, and our experiences at interviews, the NT Government’s public sector, from Ministerial level to juniors on service counters and delivering in the bush, could benefit from human rights (including civil liberties) education and training. At the top level, the people they provide services for, and the employees they manage, would benefit greatly from changed attitudes.

Human rights/civil liberties training in the public sector should be accompanied by an education campaign in schools, communities, aged care institutions and the like.

3. The legal system of the NT needs a long-term review from something resembling a cross-party inquiry and/or a standing review body, or a private sector think-tank.

There is no easy way for citizens to comment on laws, have input to draft laws before they are finalised, or to initiate a review of legal or justice issues.

Unlike other jurisdictions, there does not appear to be appropriate input to parliamentary processes through scrutiny of bills processes. There does not appear to be a workable system, which produces results, for legislation review (despite the existence of a Law Reform Committee (LRC), whose recommendations – we were told – sit unresponded to for periods of years).

Importantly, the LRC is non-statutory, and has no power to initiate inquiries, nor to respond to requests from citizens: even an overwhelming petition to the LRC, signed by 100,000 NT residents, could be ignored by government, and must be by the LRC.

While it is appropriate for the government to control the laws, people should be able to call for formal review of generic instances of injustice, breaches of civil liberties or human rights, and abuses of the law by bureaucrats, ministers or the private sector. In particular, there needs to be a mechanism to initiate reviews in cases or circumstances where existing laws and regulations are being breached in a continuing way, such as in prisons, hospitals or other government institutions especially.

It may be that an appropriate way forward would be to reconstitute the LRC with fresh people under new operating principles, backed by statutory independence. There is also a need for a requirement that the government responds formally, in detail and within a

reasonable timeframe (maximum six months is suggested, with implementation of any agreed change within a year) to findings and recommendations of the new body.

The body could be charged with examining and improving all laws affecting NT people and corporations, including statutory authorities and the NT PS, perhaps over a 15/20-year timeframe, and producing a unified, sensible, workable set of inter-operative legislation which is a model for Australia, and which is progressively enacted. The review should consider federal legislation as well as Territory legislation, and seek harmony and balance in the laws and the justice system within the NT. (It would be ideal if an exercise such as this could be concluded before statehood operated).

In considering how this new body might work, the following suggestions are made:

- a. There may be structural reforms which would benefit the NT justice system:
 - i. The system of reviewing draft legislation would benefit from having a human rights compatibility process formally introduced;
 - ii. a public submissions/comment opportunity should also be introduced for draft legislation/regulations and review of laws, through a parliamentary committee and/or other mechanism;
 - iii. a 'Law Reform Committee' able to generate its own inquiries as well as having matters referred to it by the A-G, might require a chairmanship and composition that rotated at, say, five-year intervals to ensure no one approach became fixed by longevity and/or political affiliation;
 - iv. more use could be made of the academic fraternity in and associated with Charles Darwin University (within the NT and externally), and also of linkages with other institutions and bodies, including by electronic techniques;
 - v. options for involving customary Aboriginal law, and Aborigines, should be explored with a positive frame of mind, as should options for non-lawyers to be more involved;
 - vi. in all these aspects, the option to use more electronic technology could give the NT a leading role in law reform methodology and systems in Australia, and possibly worldwide.
- b. There should be a special inquiry, as soon as possible, into mental health laws, reviews, tribunals, etc. The mental health inquiry should include health, prisons and law people as well as the general public, and it should include review of existing and required facilities, as well as requirements to plead and the right to review a pleading or a sentence in light of changes to mental health structures and rules.
- c. Who can represent an accused leading up to, and in, courts and tribunals should be reviewed, as should funding available for various elements of the legal process, including for example parole or mental health custody review boards.
- d. The question of procedural fairness needs to be addressed across the legal system, including the right to appear/be represented and to receive reports of decisions/cases in which a person is involved.
- e. Any draft laws which have potentially significant, or potentially more significant, impact on the Aboriginal people and communities of the NT should go through an additional or simultaneous consultation process involving Aboriginal people.

f. In any review involving prisons, account should be taken of creating more and wider opportunities for meaningful training and education in detention, with a view to qualifications by certificate, diploma or degree as a step towards employment on release; the opportunity for guards to train and develop their qualifications and management skills should also be seriously considered as part of any education and/or training package. Planning needs to allow for funding of 2-3 new facilities where detained people can learn trade skills and receive a certificate, and/or where Aboriginal juveniles in particular can be further educated and trained without entering the established, traditional prison system. The NT could provide a model for Australia.

“The quality of care in prison is appalling.” (comment made to CLA)

CLA makes the above comments to stimulate discussion in the NT about where the government and the legal/justice system is headed as statehood approaches.



CLA President meeting with Charles Darwin University academics in 2011.

During our research, people highlighted to us the following matters in relation to laws, regulations and practices as needing attention from civil society before wholesale legal or administrative change surrounding statehood was put in place. We expect CLA's Darwin group would choose to concentrate on these areas in the first instance:

- governance, and propriety of ministerial and public service processes and decision-making, and appeal mechanisms;
- detention and, in particular, juvenile Aboriginal detention;
- alcohol sale, purchase, consumption and transport, and drunkenness;
- reportedly falling literacy in English, leading to justice problems (allied with dire shortages of interpreters for courts);
- property forfeiture, confiscation and seizure (including guidelines for DPP)

“I can't understand how the DPP could be so cruel,” was one comment;

- drivers' licences and licensing, plus inspection of vehicles for registration;
- any laws/regulations where the impact is effectively "mandatory" (even if at one or more remove from main sentence);
- land ownership/title issues, including in/around Aboriginal communities;
- carrying/use of ID and similar cards;
- taking customary law into consideration in courts and tribunals;
- equal pay, child working age, and sex workers' registration;
- enduring power of attorney (guardian/medical/etc);
- housing issues;
- equality of rights/entitlements – refugees c.f. Australians; and
- mandatory boating/fishing/etc licences.

The 'ranking', or priority order for these should be managed locally in Darwin and the NT by local groups, but with an underpinning of the national initiatives CLA has under way.

4. Leadership needs to come from the government

The NT Government should institute an internal mechanism to take more account of human rights issues in framing laws, even before they are subjected to compatibility tests or referred to review bodies or public submission/comment.

Given the concentration on statehood over the coming years, there is a clear need and responsibility on the government to scope and promote the type of state it is aiming for, and to communicate its aspirations to its public servants and its people.

a. The attitudes and actions of senior Ministers and officials need to reflect the government's averred commitment to human rights, civil liberties, a culture of openness and transparency, and the free flow of information. Successive governments have given public commitment to these things, but the actions and words of ministers and senior public servants does not back up the verbal and printed statements.

b. It may be useful to institute relevant annual awards/prizes throughout the government and the public sector to acknowledge the type of behaviour the government aspires to, and the behaviour it wants its citizens to mirror.

5. There is no equivalent body to CLA

CLA is unique in that it encourages a mix of civil society and legal people. The benefits are that people from all walks of life, and from both the public and private sector, can be encouraged to become involved with liberties, rights and freedoms.

In Darwin this year, there has been a flush of new rights/liberties groups interested in getting started, apparently to fill similar needs to those CLA identified, but articulated differently:

Australian Lawyers for Human Rights:

As the title says, membership is restricted to lawyers, and the concentration is on legal matters in relation to human rights; the group has just formed (see details in full report). We met with the one available co-convenor, Adrienne Walters, and we have agreed the two organisations will work with the closest cooperation.

Northern Territory Committee for Human Rights Education:

The group has very close ties to Charles Darwin University's Law faculty. We met with the group (attending the address by Australian Human Rights Commissioner Elizabeth Branson) and its leader, law lecturer Jeswynn Yogaratnam, and we have agreed to cooperate closely.

*Right: CLA CEO Bill Rowlings
and CLA member and United
Voice union official,
Erina Early.*



Summary:

There is considerable potential – and need – for a civil liberties body in Darwin. While we were there, and shortly after, membership of CLA in Darwin reached nine people, which is sufficient for a group to start.

Comment Person A (not a CLA member):

"We're losing a lot more of our personal freedoms than I'm comfortable with."

Comment Person B (not a CLA member):

"It's very much the time to start up a civil liberties group. There are issues other than Aborigines and refugees...housing, appeal mechanisms, mandatory sentencing, juvenile detention."

Darwin...it's where raw meets potential, the last Aussie urban frontier, and both good and bad are over the top. If you're seeking problems, Darwin's the place to look...but they come surrounded by gilded opportunity: you can make what you like in Darwin, including yourself...

–Bill Rowlings, July 2011

And now...

Since 2011, the CLA NT entity has tippy-toed along with individuals contributing to isolated cases. Appeals from non-CLA members have been followed up, and the NT government has been a target of any national initiatives stemming from the central CLA office in Canberra. Rob Wesley-Smith has kept a watching brief on activities, and spoken to union organisations as the local representative of CLA with a wealth of liberties and rights history salted away in his memory.

But a local face and name for the future is missing. What is required is a person not already engaged full-time in legal or liberty-related work to under the ‘anchor’ position of the ‘secretary’ of the local CLA group, based in Darwin. Other groups in other NT towns would be delightful, but are unlikely until a strong group forms in Darwin.

The CLA Board continues to search for that one ‘right’ person. If you would like to put up your hand, please do...just go back to the start of this chapter, and have a look at all the fun Robert Wesley-Smith has had (and what he has helped to achieve) over 40 years of being the backbone of civil liberties and rights in the NT, whether in a formal position or not. His summary of the flag-burning incident recalls a time when more people were prepared to stand up and be counted:

“Of course we intended, or knew, the flag-burning would cause offence to the Indonesian consulate, but that seemed minor in comparison to their unlawful killing of Timorese. Our walking across the road was a quick decision only because the police told us to stop obstructing the footpath or something similar. Our activities only became a ‘dangerous action’ when the police got involved. Superintendent Ey was feeling inside the flags as we tried to ignite them, and I remember screaming at him to get out of the back of the car, fearing he might catch alight. Fortunately as I yelled at him, someone away from the people at the back of the car got his flag burning, and the main group moved their flags over to there to light up...”

So, the story of civil liberties in Darwin and the NT begins with the police attempting to take control, but includes at least one occasion where the NT Council for Civil Liberties secretary saved the skin of a superintendent of police. We wonder how much better civil society would have been over the past 40 years, and now, if authorities had listened more to the counsel of the council, and less to the counsel of the coppers.

In 2016, part of the disaster that is the NT prison system became public when an *ABC Four Corners* TV program revealed hooding of children and other bad practices at the Don Dale Juvenile Detention Centre. A Royal Commission – but only into juvenile detention – followed. Much more inquiry needs to be made into the detention system, and the legal and justice systems, in the NT...as in other states. ENDS

The authors of *Civil Liberties in Australia*, Kristine Klugman and Bill Rowlings, thank Robert Wesley-Smith in particular for helping to source information for this chapter. If anyone has more information, and particularly photos of people or incidents mentioned, please make contact with secretary@cla.asn.au

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