

**CEREMONIAL SITTING TO MARK THE PASSING OF THE HONOURABLE  
AUSTIN ASCHE AC KC**

Supreme Court of the Northern Territory  
State Square, Darwin

3pm, Friday, 28 March 2025  
Courtroom No. 1

**TRANSCRIPT OF PROCEEDINGS**

**Presiding Judges**

The Hon Chief Justice Michael Grant AO  
The Hon Justice Stephen Southwood  
The Hon Justice Judith Kelly AO  
The Hon Justice Jenny Blokland AO  
The Hon Justice Sonia Brownhill  
The Hon Justice Meredith Huntingford  
The Hon Justice John Reeves  
The Hon Justice John Burns  
The Hon Acting Justice Trevor Riley AO  
The Hon Acting Associate Justice Craig Smyth

**In Attendance**

The Hon Deputy Chief Justice Robert McClelland AO  
The Hon Elizabeth Evatt AC  
The Hon David Angel KC

GRANT CJ: We welcome everybody in attendance today. The Court is sitting this afternoon to honour the late Honourable Austin Asche AC KC, a former Justice of this Court who sadly passed away on 14 December 2024 at 99 years of age.

Sitting on the Bench this afternoon with the permanent and additional judges of this Court is former Chief Justice and now Acting Justice Trevor Riley AO. We are also joined on the Bench today by the Honourable David Angel KC, a distinguished former member of this Court who was appointed and served during Austin's tenure as Chief Justice.

We are particularly honoured to be joined on the Bench today by the Honourable Robert McClelland AO, the Deputy Chief Justice of the Federal Circuit and Family Court of Australia, together with the Honourable Elizabeth Evatt AC. In one of his past lives, Deputy Chief Justice McClelland was a good friend to the Northern Territory legal profession and a frequent visitor to the Territory. The Honourable Elizabeth Evatt AC was the first Chief Justice of the Family Court of Australia and, in fact, the first female Judge appointed to any federal court in this country. She has been a distinguished jurist in many roles, both before and after that time, and was a former colleague of Austin when he served on the Family Court.

We are also honoured today by the presence of Austin's family and his friends. As most in attendance will know, Austin's daughter, Wendy, is a respected anthropologist who devoted herself to Austin in his final years. We welcome Wendy here today. We also thank those family members and friends who have travelled great distances to be here today in celebration of Austin's life.

We acknowledge the presence of former Administrators, the Honourable Sally Thomas AC and the Honourable Vicki O'Halloran AO CVO. Sally was one of Austin's colleagues during his tenure as Chief Justice and, some time later, she followed him into the Office of Administrator. Austin was a mentor to Vicki in a number of roles, and she, in turn, was one of his star proteges who also followed him into the Office of Administrator.

We also acknowledge the presence of the Solicitor General, Mr Nikolai Christrup SC; the Vice-Chancellor of Charles Darwin University, Professor Scott Bowman AO; the Acting Independent Commissioner against Corruption, Mr Greg Shanahan PSM; the Chief Executor Officer of the Department of Corrections, Commissioner Matthew Varley; the head of the Anti-Discrimination Commission, Commissioner Jeswynn Yogaratnam; and the Honorary Consul for Denmark, Mr Hamish Baddeley SC.

We extend our particular appreciation to the President of the Australian Bar Association, Ms Róisín Annesley KC, and the immediate past President of the Association, Mr Peter Dunning KC, for honouring both Austin, his family and the Court with their attendance here today.

The Court will be addressed in turn this afternoon by the Solicitor-General on behalf of the Attorney-General, the President of the Australian Bar Association, the Vice President of the Northern Territory Bar Association, Dr Cameron Ford OAM SC,

the President of the Law Society, Mr Richard Henschke and Mr John Stirk representing the Alice Springs legal profession. I say by introduction only that Austin Asche was a towering figure in the public life and history of both this Court and the Northern Territory more generally. I will leave it, however, to our speakers to detail his life and the nature of that contribution in greater detail.

Thank you, Mr Solicitor.

MR CHRISTRUP SC: Thank you, Chief Justice.

I appear on behalf of the Attorney-General and the Northern Territory Government. The Honourable Marie-Clare Boothby MLA regrets that she is unable to attend today and has asked me to convey her apologies.

I acknowledge the Larrakia peoples as the traditional owners of this land. I pay my respect to elders past and present.

The Northern Territory extends their deepest sympathies to all of Austin Asche's family, including his children, Wendy and Harry and his many grandchildren and great grandchildren.

Keith John Austin Asche was appointed as a Judge of this Court on 14 April 1986.

The resident members of the Bench at the time were Chief Justice O'Leary and Justices Nader, Kearney, Maurice and Rice. His Honour was appointed from the Family Court of Australia where he had already served for more than 10 years. Just over a year later, Chief Justice O'Leary sadly had to retire on grounds of ill health and Justice Asche replaced him in that office on 17 August 1987.

He was to serve as Chief Justice of this Court for over half a decade before accepting appointment as the 15th Administrator of the Northern Territory on 1 March 1993, a position he would hold for four years. His Honour's decisions from this Court were reported on well over 100 occasions. His judgments are erudite, incisive and easily understood.

I will leave it to others to take the court to a selection of the more remarkable passages of the many reasons he published. However, I will make one observation. I selected a case from the list of his Honour's judgments, the Court of Criminal Appeal decision in *R v Jabaltjari*, a case concerning the role of a guilty plea in the sentencing process.

His Honour's analysis demonstrates not only a great depth of legal knowledge and a clarity of expression evidencing complete control of the English language, but also reflects that most valuable of commodities, common sense.

But Austin Asche was a soldier before he was a lawyer. His father, Lance-Bombardier Eric Thomas Asche, served in the Great War in France and Belgium in the 2<sup>nd</sup> Battery, 1<sup>st</sup> Australian Field Artillery Brigade. He was awarded the Military Medal for action at St Quentin Canal, a waterway which formed part of the German defensive Hindenburg line in northern France. It was rewarded for his bravery when he on 29 June 1918 kept up communications after laying a ground line under heavy shellfire.

He was subsequently gassed during the Battle of Bellicourt and Austin and his siblings grew up witnessing the devastating effect this had on their father's health. He lived only to his mid-forties leaving Austin's mother with sole responsibility for the five children.

Since 2012, there has been a Darwin street devoted to the memory of his father. Fittingly, it can be found in Muirhead, a suburb named after the very Supreme Court judge whose departure from this Bench in 1985 was to mark the occasion of the appointment of Austin Asche.

Austin had a strong sense of duty and responsibility, whatever the task he was given, and further, was tremendously proud of Australia and of being an Australian. With the Second World War and Austin coming of age he, like his father, therefore joined the armed forces. He chose the Royal Australian Airforce in 1944 with aspirations of becoming a fighter pilot, but those hopes were dashed on account of his eyesight. "Not for you", they said.

Of the alternatives offered, he chose radar operator because, in his words, "it sounded mysterious". The modern radar was still a recent invention, and the technology was to remain in a state of ongoing development throughout the war. After completing training with the other "radio ops", he was sent to Darwin to serve in the network of radar stations that spanned the north coast of Australia.

The Japanese were still occupying most of their conquered territory, including Indonesia, or the Dutch East Indies, as it was then known. Darwin was, of course, very different to how he had experienced it in the late 1920's and '30's when he was growing up. The place was now teeming with soldiers, Australian and American alike. He has since reflected on the fact that this was the first time in Darwin that he encountered a thing such as crowds.

His Honour was stationed at the very small West Montalivet island off the Western Australian north coast which was home to Radar Station 344. Scanning for incoming enemy aircraft and assisting friendly outgoing aircraft, often engaged in bombing raids, was a 24/7 exercise, so there were usually 8 radio operators, 10 guards and a support crew on the island at any one time.

They worked in teams of three; one person would read the screen and adjust the direction of the radar using a manual handle, another would plot on a large map the information relayed by the radar operator and the third would communicate the results to HQ.

It was a small and, at times, a lonely place. His Honour recalled that the soldiers agreed it was okay to befriend and talk to the many local lizards on the island, but if a lizard spoke back, then it was time to return to the mainland. His Honour was to spend eight months on West Montalivet before he was transferred to Radar Station 38 on Bathurst Island.

His service in the Air Force was subsequently recognised by the award of the 1935 to 1945 Star, the 1939 to 1945 Defence Medal, the 1939 to 1945 War Medal and the 1939 to 1945 Australian Service Medal.

It was to be the Territory's luck that Austin Asche, at three stages of his life, had occasion to spend time in Darwin before permanently moving here in 1986.

I have already mentioned his time in Darwin during the most recent World War. But, as most people know, his family moved to Darwin from Rabaul, in what is now Papua New Guinea, when Austin Asche was about two years old. He would spend the next six to seven years here, usually shirtless and shoeless, attend Darwin Primary School on Woods Street and at times play with the Administrator's daughter at Government House.

Apart from a brief sojourn to Melbourne, he was to continue his education at Darwin Primary School until age 12. He then moved to Melbourne to attend high school and, after the war, completed an arts degree and a law degree at the University of Melbourne.

He, himself, has since reflected following graduation from high school that he considered becoming a teacher, but as he put it, in his family, the choice at the time was usually between becoming a lawyer or a doctor.

There had been several lawyers on both sides of his family. His father served as the Crown Law Officer in Darwin, and being the only government lawyer in town, he had the responsibility of being the prosecutor, parliamentary draftsman, legal aid administrator and general legal advisor to the government. Further, Austin's paternal grandfather had been a lawyer in Norway and there had been District Court judges on his mother's side of the family.

His Honour's third series of encounters with Darwin occurred after his appointment to the Family Court of Australia on 5 January 1976 following a successful career at the Bar practising predominantly in family and criminal law. It being a national Court and there not being a sufficient volume of work to justify the appointment of a permanent Family Court judge in Darwin, a judge would regularly be dispatched on circuit to service the Top End about every six months or so. His Honour, being the second most senior judge on the Court, had no qualms about pulling rank on his more junior brethren and sisters and calling dibs when there were cases to be heard up here.

We are all grateful to Chief Justice Evatt for permitting Austin Asche to pursue his passion for the Northern Territory in this manner. Your Honour served with him throughout his time at the Family Court and there can be no real doubt that those trips to the north played a pivotal role in his Honour's decision to subsequently accept the appointment to this Court.

And it was a place that he so obviously loved. There was an obvious glint of fondness in his eyes and indeed happiness whenever his Honour had occasion to talk about Darwin or the Northern Territory. He has referred to his invitation to join the local bench as "a marvellous phone call" and one he was eager to accept. He wanted to return to his hometown to settle in and never leave again. As Austin himself put it, you can leave Darwin, but Darwin never leaves you.

His Honour was an incredibly hard worker. He never turned down additional work and gladly welcomed it notwithstanding his additional duties as Chief Justice.

He would also make a point of ensuring that he attended the Alice Springs opening of the legal year and that he conducted the first yearly circuit sittings there. Saturdays were often spent writing judgments, and Alice Springs was no exception.

One such circuit happened to coincide with the shooting of the movie, *Evil Angels*, starring Meryl Streep and Sam Neill as Lindy and Michael Chamberlain. The Alice Springs Town Council had approved the cordoning off of part of Hartley and Parsons Streets over the weekend so that the filming of Meryl Streep walking up the stairs to enter the Magistrates Court could proceed undisturbed.

As was his habit, Austin Asche would enter the same building on Saturday mornings through another entrance to write his judgments for most of the day and he was alarmed to be told by a staff member on the Friday that, by Council decree, his access to the building had been prohibited. His Honour was not a pushy man, but on this occasion he became uncharacteristically insistent, "I have no intention of going anywhere near the movie crowd. I won't bother them if they don't bother me."

A late Friday afternoon guarantee was eventually extracted from the Town Council to the effect that the film set security team would permit him to enter the building. Greeting his Honour on the day was a large crowd of extras outside the Courthouse, some of whom had been instructed to shout, "She's guilty", while others had been told to yell, "Let her go, she's not guilty."

And so it was, while Meryl Streep spent in excess of 20 takes ascending and descending the steps at the front of the building amidst a rowdy crowd in respect of one court case, that his Honour sat in the Chambers at the rear of the same building writing away in respect of another. Of course, by the time his Honour left Chambers in the late afternoon the Hollywood crowd had packed up their gear and moved elsewhere.

Judgment writing aside, there were other less orthodox duties that Austin Asche performed as Chief Justice.

He would at times receive courtesy calls in Chambers at 9 am from visiting heads of State, ambassadors, high commissioners and highly ranked defence force officers, as arranged by NT protocol.

Another tradition that his Honour particularly enjoyed was the signing of the official documents to effect the adoption of a child. The parents and the child would attend his Chambers for the ceremony and there would be congratulations and morning tea. An entirely happy occasion.

It was also during his Honour's time at the helm that the Court moved from the old building to the one in which we find ourselves today. The planning phase was a time of regular meetings concerning various design aspects of the new building. The size of Courtrooms, the layout of prisoner cells, the Judges' and the Masters' Chambers, the Sheriff's office and the Registry, Court recording and the library were all matters that made demands on his Honour's time.

On and back it would go between the Chief Justice meeting with government officials and his Honour consulting with his fellow Judges about the latest proposals. He has, in a different context, remarked that being a Chief Justice is like being the chairman of a body of strong-minded individuals.

His Honour also headed up the team that organised the official opening of the building. The list of invitees was considerable, including Ministers, local VIPs and interstate judges, many of whom expressed their envy at such magnificent facilities.

I have already remarked on his incredible work ethic. His Honour took on an unprecedented number of extra-curricular responsibilities in his lifetime.

He was involved in the formulation of the Commonwealth *Family Law Act* in 1975 which saw the move away from fault-based divorce. Whilst at the Victorian Bar, he was a part-time lecturer in the Family Law at the Royal Melbourne Institute of Technology and a part time lecturer at the School of Social Studies at the University of Melbourne. He was a presidential member of the Institute of Family Law Studies, a member of the Family Law Council, chairperson of the Family Law Council Committee on Reproductive Technology, Honorary Colonel in NORFORCE, Chief Scout of the Northern Territory, Chairman of the Parole Board, President of the Northern Territory Division of the Red Cross Society, President of the Northern Territory Branch of the Scouts Association, Knight of the Order of St Johns and a patron of the Vietnam Veterans Association of the Northern Territory, a patron of the Retired Servicemen League. His Honour believed in mateship, what it means to be Australian and to be proud of his country. He would be at the ANZAC Day march and could subsequently be found at the RSI Club enjoying a beer. He held an honorary doctorate in literature from Deakin University and a separate honorary doctorate in law from the Northern Territory University, was Adjunct Professor at Law at the Charles Darwin University, an Emeritus Chancellor at Charles Darwin University and finally, his Honour was the Chairperson at the Northern Territory Law Reform Committee, a responsibility that he dutifully discharged well after turning 90.

He touched many lives during his time in the Territory. I was chatting to an elderly couple a few weeks ago. These were not people of any particular renown or with any particular connection to the law or education. I knew I would be preparing for today's occasion and I asked on the off chance whether they had happened to have come across his Honour.

"I know Austin Asche!" was the immediate and unified response. They were both bridge players and it turned out that his Honour often made Government House available to the Darwin Bridge Club as a venue for the playing of that particular game. But true to form, merely providing the facilities was not enough for his Honour. He took the time to welcome the players in person as their host. And this he would do with his tale of the thirteenth trick.

His Honour also had a keen interest in matters long passed. Among those were the Icelandic sagas and anything Norse, possibly inherited from the Norwegian grandfather I mentioned. His knowledge of the topic was nothing short of extraordinary. He combined this with another of his devotions, namely, his beloved dogs in Darwin, who were all given traditional Norse names. First there was Olaf, then Haakon and finally he had Freya.

It is well-known that Austin Asche dedicated a large portion of his life to educational institutions. The development and promotion of a sound education system was one of his great passions. He served as a Councillor and later as the Chairperson of the Frankston State College, which was later to become Monash University Peninsula campus.

He was a member and then Deputy President of the State College of Victoria. He was a Fellow of the Australian College of Education, a member of the Council of the Royal Melbourne Institute of Technology, then Vice President and finally President. He served as the Chairman to the 1979 Inquiry into Teacher Education in Victoria. He was the chancellor of Deakin University from 1983 to 1987 and a Fellow of the Trinity College at the University of Melbourne.

That takes me to his involvement with the Northern Territory University College, as it was then called, immediately upon his arrival here in 1986.

He accepted appointment to the college council after becoming a Supreme Court Judge and was then promoted to Chairman shortly thereafter. The importance of his Honour's work in transforming the college into the Northern Territory University cannot be underestimated. It was a long and arduous process for all involved.

It is also worth noting that his Honour, during this time, donated his considerable personal collection of law books to the library of that institution. And he was immensely proud, as a Territorian, when the new university officially opened in 1989. And even more so, because he had been chosen as its inaugural Chancellor.



It was a position that he treasured above much else and it was with tremendous sadness that he relinquished it upon his appointment as Administrator. But his legacy in respect of education lives on. The annual Northern Territory Training Awards, which recognise training excellence and achievements have, since 2012, been able to announce the Austin Asche Apprentice of the Year.

The Charles Darwin University has, since 2011, held the annual Austin Asche Oration in Law and Governance. The inaugural address was given by the Honourable Patrick Keane, then Chief Justice of the Federal Court and other orators since then have included Justice Kirby, Chief Justice French and Chief Justice Kiefel.

At the Casuarina Campus of Charles Darwin University, only a stone's throw from the university bookshop, one finds Gulwa – The Austin Asche Hall, the venue for graduation ceremonies and other significant university events. The inscription on the hall is in the following terms: "Austin Asche is a Territory treasure whose relentless passion for tertiary education led to the establishment of the Charles Darwin University".

I have mentioned that his Honour went to Darwin Primary School when he was a boy. It is at that very site on Woods Street that is now the home of the recently opened Charles Darwin University Danala Education and Community Precinct.

When next walking past the precinct, you will notice the magnificent boab tree at the front. It was almost a hundred years ago that a young Austin would get in trouble from his teachers for climbing that very tree, a tree that now welcomes students to the very university that he was so instrumental in creating.

That then takes me to his Honour's investiture as a Companion of the Order of Australia. His Honour was awarded this, the highest Australia civil order possible, in 1994. It is only given for eminent achievement and merit of the highest degree in service to Australia or humanity at large. It was bestowed upon Austin Asche in recognition of his service to the law, to tertiary education and to the community, particularly the people of the Northern Territory.

And it was presented to him by the Governor-General at Government House in Darwin. Dr Valeria Asche, his life-long love and most loyal friend would subsequently be made a Member of the Order of Australia for service to science, particularly in the field of microbiology and to the community of the Northern Territory.

His Honour may not have been a teacher by name, but he was very much one in substance. He led by example and served as an inspiration to everyone around him. A life well-lived indeed. A person who worked very closely with his Honour during his time on the Bench and the four years that followed at Government House, summed it up best, "He was one of the greatest men I have ever known."

May it please the Court.

GRANT CJ: Yes, thank you, Mr Solicitor.

Yes, thank you, Madam President.

MS ANNESLEY KC: If the Court pleases, I appear on behalf of the Australian Bar Association. It is a privilege to honour the life of the Honourable Austin Asche AC KC, and to recognise his outstanding contribution to the legal profession, the administration of justice and the government and the people of the Northern Territory.

As we have heard, Asche completed his secondary and tertiary education in Melbourne. Although he commenced his practice of the law in Melbourne, he first signed the Bar role in Queensland in 1951. For reasons that are unknown, at least to me and of those of whom I have made enquiries, Asche's sojourn to Queensland was short-lived.

In 1954, he returned to Melbourne, where he signed the Victorian Bar role. Practice at the Victorian Bar in 1954 was a very different beast to that which exists today. There were no e-briefs, no e-hearings, not even any emails. Asche was number 515 on the Bar Roll, although there were only approximately 200-odd barristers in active practice.

At that time, it was customary that, if you found yourself not in Court on any given morning, you would wander over to the Common Room in Owen Dixon Chambers for 'elevenses'. The Bar rules required you to sit next to the person who was already present, whether you liked them or not.

It is fair to say that no one ever balked at sitting next to Asche. He was regarded universally as being thoroughly decent, charming, likeable, possessing old-world qualities, never pushy, always understated. Moreover, he had a quality, unfortunately rare in some barristers, he was thoughtful before he spoke.

In 1954 and throughout his practice as a barrister, counsel were required and expected to do anything and everything. There was little in the way of specialisation. Although recognised today for his contribution to Family Law, the Hon. Neil Brown KC recalls Asche appearing and advising in equity and trust and in commercial litigation.

At the other end of the legal spectrum, the Hon. Frank Vincent AO KC recalls Asche appearing on behalf of the accused in numerous criminal trials, including murder trials, when death was still the mandatory sentence in Victoria. Asche's inherent charm, his abilities as an advocate and his legal intellect, which allowed him not only to advocate well for his client, but importantly, to read the play, ensured that juries and clients loved him; prosecutors less so.

Prior to the introduction of the Commonwealth *Family Law Act*, matrimonial cases were heard in the Victorian Supreme Court. The law required deserted wives

and single mothers to first apply for maintenance from the father of the child prior to being entitled to receiving any support from the government.

Asche felt great sympathy for the women in those circumstances and was involved in Family Law matters from his early days in practice. Asche played a pivotal role in the law reform which led to a federal approach to Family Law disputes.

At a time when Family Law was regarded as work for 'lady barristers', Asche was one of the few men who worked in the area and was regarded as a leader in the field. In recognition of his outstanding contribution, Asche was the first Victorian appointed to the Family Law Court of Australia.

The Hon. Diana Bryant AO KC, former Chief Justice of the Family Court, recalls appearing as a very junior practitioner before Asche in Perth. At that time, most senior barristers in Perth were not inclined to come to terms with the new legislation and left Family Law to the younger practitioners.

Bryant recalls warmly the patience and moreover the encouragement and affirmation that Asche freely gave to those appearing before him. Before adjourning the Court, Asche would espouse to each client, regardless of the outcome, their very good fortune in having been represented by such accomplished and capable counsel.

Counsel who appeared before Asche recall that he was a patient, empathetic judge who was always civil and before whom parties always received a fair hearing. Asche was not only a barrister of his time, but an outstanding exemplar to all barristers of civility, legal acumen, court craft and contribution to civil society.

I will leave it to others to speak of his legendary parties at the Savage Club.

May it please the Court.

HIS HONOUR: Thank you, Madam President.

Yes, Mr Vice President.

DR FORD OAM SC: May it please the Court. I rise on behalf of the Northern Territory Bar Association and say also that it is a privilege to speak here of his Honour's time among us. Those of us who are of a certain age had the pleasure - and it was a pleasure - to appear before his Honour many times, particularly in the days when we had the Judges' interlocutory list as well as the Master's list.

And I can echo the comments of Mildren J in his book that his Honour was, without exception, regarded as an excellent judge to appear before with an exceptional grasp of legal principle. I expect that one of the reasons he was so pleasant to appear before was that he asked so few questions, because he thought that the less said, the sooner it was ended. But it did make for a pleasant time.

I should say that there is someone here today who not only appeared before his Honour, not only with his Honour, but instructed him when he was a junior at the Bar in Melbourne. Mr Rex Wild KC, as he then wasn't, as an articled clerk in Melbourne, used to instruct Mr Asche before he took Silk. He was his regular go-to family lawyer.

And it's these coincidences of Territory practice that I can echo his Honour's comments that it's a difficult place to leave. His Honour was a judge, and indeed a man, of a bygone era, a more genteel age. He was, you could say, a renaissance man with wide and deep interests from Latin and ancient Greek through to Australian literature.

We all experienced his Churchillian vocabulary. I'm not sure if I heard it more than any others, but I seem to recall him a number of times at the close of submissions saying, "So Mr Ford, stripped of all obfuscatory persiflage...", I wasn't sure the first time if that was a complement or what, but I soon learnt that it wasn't.

And I understand, at his funeral, the famous cuttlefish defence was mentioned, the sagacious mollusc puffing out clouds of inky blackness. It has become a favourite of every applicant for summary judgment.

His Honour was also very fond of Australia literature and very well-versed in it. Mr Lindsay recalls appearing before him on an application for substituted service, going patiently through the affidavit saying all the efforts that had been made to locate the man and serve him. And at the end of it, his Honour just summed it up and says, "So Mr Lindsay, he's gone to Queensland droving and we don't know where he are".

His Honour also had a very gentle humour that he employed when correcting us. On one occasion, I imagine it must have been an urgent application, a younger solicitor appeared before him without socks before it was the fashion. At the appropriate time, his Honour just said, "Raceday, Mr Spazzapan?"

For all of that, he wasn't old-fashioned. He wasn't resistant to change. It was under his watch that case management was first introduced. The dreaded status assessment meetings when we were called up, usually before Martin J, to do the unthinkable then of having to explain to a judge why an action had sat dormant for two and three years. It was outrageous. It also meant the death of the only Latin phrase that most lawyers love, "Adjourned sine die". It was not to be heard under his Honour's watch.

Your Honours, for those who didn't have the pleasure and privilege of knowing him, his personality is captured in the portrait outside of this Court in the centre of the portraits, as he looks benevolently across the hall to one of his more recent successors on the other side, who returns the look with that penetrating - I'm going to say the penetrating gaze that we've come to know and love.

Your Honours, I did also mean to mention Dr Val Asche. We got to know her a little. There was one year when drinks at the opening of the legal year were held at his Honour's house at Fannie Bay above the Sailing Club. I understand the profession as a whole is moving strongly for that tradition to be reinstated.

I'm not sure if his Honour learned more about the local profession than he intended, because I think it was the one and only time that that occurred. Your Honours, we do appreciate the time that his family lent him to us, and we appreciate the price that others have paid for him to be what he was to us. We, and the Court and the community are richer for his time among us.

May it please.

GRANT CJ: Yes, thank you, Mr Vice President.

Mr President.

MR HENSCHKE: Thank you, your Honour.

May it please the Court, I rise to address the Court on behalf of the legal practitioners of the Northern Territory. We celebrate the life of the Honourable Austin Asche AC KC and mark the extraordinary contribution that he made to the legal profession in the Northern Territory and the Northern Territory at large.

The Honourable Austin Asche's contribution to the legal profession in the Northern Territory has been the most carefully addressed today by the Solicitor General for the Northern Territory, the president of the Australian Bar Association and the Vice President of the Northern Territory Bar Association and will be, undoubtedly, addressed by Mr John Stirk, eleventh man, on behalf of the Alice Springs legal community.

To say that the Honourable Austin Asche made a huge contribution to the legal profession in the Northern Territory is a bit like you saying Usain Bolt is quite quick on his feet, or that Dame Judi Dench is a decent actress. It's an understatement.

The Honourable, Dean Mildren notes in his text, "Big boss fella all same judge" that the Honourable Austin Asche regarded himself as a black letter lawyer who saw it as his job to apply the law as it was written, rather than what he thought should have been written. And I'll get to that subject a little later.

The Honourable Dean Mildren also observed that his judgments were written with style and precision and on occasion, humour was used to blunt what might have otherwise been devastating criticism. I enjoy reading his Honour's judgments and I actually do so for entertainment. Some might say that's an unusual thing for a commercial solicitor to do, but the Honourable Austin Asche's judgments are a compelling read.

One of those compelling reads is a classic judgment of the Full Court of the Court of Appeal. The Honourable Austin Asche sat with the Honourable Brian Martin AO MBE and the Honourable David Angel KC, one and only. And that judgment is in the matter of *Allan Rowlands Holdings Pty Ltd v Gaye (No 1) Pty Ltd* and it is classic Asche.

The Honourable Austin Asche referred to the verbal agreement, the subject of proceedings and said, and I quote, “Singular and plural nouns and verbs cavort gayly and inappropriately throughout the agreement. But it would be tiresome to mention this more than once.”

He also stated in that case that he felt that it was not necessary to detail the rather complicated history of the proceedings and he observed, “Regrettably, it seems that this serial is to be continued whatever the outcome of the appeal may be.”

Then there is the “Veranda case”, otherwise known as *Miaoudeis & Ors v Gوماتos & Ors*. This is a case that involved procedural matters and an interpretation of the constitution of an association. And in particular, whether or not the committee acted constitutionally, and was a meeting properly called to seek the views of members about the desirability or otherwise of erecting a veranda. His Honour observed:

I cannot view this matter as so urgent that the time of this Court be taken for what might be several days to the detriment of other cases merely to interpret a constitution which, in any event, needs drastic revision to announce some possible past irregularity upon which nothing immediate seems to depend for the supposed benefit of an electorate which, composed as it is of descendants of the first of the great democracies, will exercise its own judgment without the Court’s assistance and with, I would hope, the calm of Pericles and the wisdom of Socrates.

And full steam ahead, his Honour also said that he did not accept a particular argument that the whole matter should be heard. He said, “It would be an encouragement for those who wished to obtain priority to dress up their arguments and present a complexity to the Court on a simple matter.”

His Honour then said, “That argument has about as much attraction and validity as that of a noisy queue-jumper.” Counsel for the plaintiff was probably not anticipating that outcome. Counsel for the defendants, one JC Kelly, no doubt has fond memories of his Honour’s elegant disposition of that case with an order that the plaintiff pay the defendant’s costs.

Finally, completing my eclectic sampling of his Honour’s stylish judgments, I refer to a case that I affectionally know as the “palm tree case”, otherwise known as *Arthur v The Public Trustee*. His Honour, with what seems to me to be a mix of steely determination and humour said:

Mr Pauling, I think somewhat faintly in view of the authorities ranged against him, has urged us to have regard to 'velocity of social change'.

A phrase taken from the judgement of Glass JA in *Allen v Snyder*.

If, by that, he is inviting us to apply subjective notions of fairness outside established principles, I cannot accede to that invitation. Darwin maybe truly blessed with a colourful array of palm trees, but they are not there for judges of this Court to sit under.

In April 1986 on the occasion of the swearing in of the Honourable Austin Asche as a judge of this Court, he said:

But of course, I make no secret at all of my liking for Darwin. Indeed, as you have observed, I have managed to come up to Darwin from the Family Law Court far more often than any other judge in the Family Court. Very early in the formation of the Family Court, knowing that occasionally a judge would be deputised to come to Darwin, I announced publicly to my brother judges in the Family Court that I would use every dirty, low-down, rotten, sneaky, underhand means to get up to Darwin.

His Honour then said, "I have fulfilled that promise quite satisfactorily."

Continuing in the theme of understatements, the Honourable Austin Asche may well have said if he was with us today that his contribution to the legal profession and the Northern Territory at large was quite satisfactory. The entrance to Court 1 is guarded by former chief justices of this honourable Court. The portrait of the Honourable Austin Asche by Danelle Bergstrom wonderfully captures the character of the Honourable Austin Asche.

Today he peers down from lofty heights of the foyer with an expression of interest and amusement. As he oversees the legal pantheon today, I think that he would be most content with today's proceedings. We remember the Honourable Austin Asche as a very fine Territorian and an extraordinary judge.

May it please the Court.

GRANT CJ: Yes, thank you, Mr President.

Mr Stirk.

MR STIRK: Your Honours, I feel like I'm at the Rocky Horry Picture Show, because I've had to take a quick jump to the left, but I am also feeling, as I have been reminded, that I am the tailender batting at number 11 and those speaking before me have obviously got the best lines. But my inspiration is to a Jason Gillespie, who managed to score 201 once normally batting at number 11. So there's hope yet.

Austin was obviously the ultimate relations' man that I've ever met. Everyone has echoed those comments. Fortunately, I was practising in Darwin all through the eighties, but in particular from 1986 when Austin came to this Court. I have had regard to the ceremony that was conducted in 1986 when he was appointed as a replacement for Jim Muirhead J. Interestingly, at that time, the administrator was missing and the administrator is missing again.

But fortunately, we've got two female past administrators who have stepped in where the males have failed to deliver. I was also fortuitously president of the Law Society for two years during that period of seven years when Austin was the chief justice and I can always remember things that he did in terms of the teaching that we've heard about, introducing the capacity for this Court to adjudicate the Year 11 and 12 law student moots from around the Territory.

So Austin sat there and we had young boys and girls, somewhat I think overawed by what was going on, but was Austin the teacher. He was just phenomenal in doing what he did. Can I also reflect perhaps a little on what the Solicitor General has talked about in terms of the judges of those times and how things have moved on.

Back in the eighties, we had judges, a number of whom had experienced wartime service and then returned to postwar Australia and sadly, Austin is the last of those. Jim Muirhead, who he replaced, used to tell me about his fairly grisly days in Rabaul carrying flamethrowers at the end of World War II.

Interestingly, Austin had lived as a very young boy in Rabaul before his parents moved to the Territory. Sir William Forster, the first Chief Justice, had served in the RAAF and Phil Rice, who was on the Bench, had arrived in Alice Springs at the age of two on the first Ghan train in 1929, had joined up as a stoker, and postwar ended up as a Judge Marshall of the Royal Australia Navy Reserve.

Both Phil and Austin, fortunately for all of us, came back to practise in the Territory. They had spent their young years here. They returned. Phil Rice, in my humble opinion, was probably the greatest, second only to Ian Barker, that I've ever heard, but those two in combination were incomparable.

We've also heard a little bit about Austin's time at Radar Station 344. He always told me that his Kimberley experience was such that he thought the Northern Territory ought to somehow annex the Kimberley. I never quite worked out how he was going to do it, but that was one of his lifelong themes, "We need to get the Kimberley".

Can I also just share a moment about Val Asche who, as Austin always said to me, was the superior intellect in their partnership of over 60 years. He thoroughly enjoyed, as he said, being the handbag at international conferences when Val was the keynote speaker. He said that she was far more the keynote speaker than he ever was in his lifetime. So they were a mighty team.



Can I just talk briefly as well about his time, post-Queensland and back in the Victorian Bar in the early - well, probably from 54 on, but the information I've got primarily comes from John Cowdery who was a sometimes Central Land Council lawyer, the second DPP in Victoria and on the Victorian Court of Appeal and the Institute of Forensic Medicine for many years.

John juniored Austin back in the sixties and seventies and Austin himself said to me that his time in Queensland was learning poetry, because nothing much happened in the State of Queensland between 1951 and 1954, and some might say for a number of years after that.

But it gave him the time to learn his Australian poetry and we've heard references to the Banjo and we'll come back to that in due course. His pre-eminence obviously was matrimonial causes, that is, John Cowdery tells me, by 1972, Austin had taken Silk and it was there that he and Austin started doing a number of murder trials.

In 1972, the Public Solicitor in Victoria was responsible for organising representation and John assures me, in those days, the average Victorian killer wasn't too flush with cash. Things have changed remarkably in Victoria in between and obviously we have a better class of criminal who can afford eminent counsel.

He used to tag-team Frank Vincent, who we've heard about before, a man who conducted over 300 murder trials at the bar, and the practise was that silks of any persuasion would do one murder trial for the Public Solicitor each year. John Cowdery says there was some fission for him as a junior because, as we've heard before, until 1975, the death penalty could still be pronounced in the event of a murder conviction.

So John said he was always very nervous of these outstanding property and commercial silks who came to do murder trials. But fortunately, he said, in Austin's case, Austin just had a great skill in cross-examining witnesses with gentle persuasion and his skill in addressing juries with wisdom and decency attracted their support.

His final recollection was of an alleged contract killer who exhibited at all times high levels of aggravation. Austin simply said to him, "A, B, C, always be calm. Neatness is not a characteristic of a paid killer. Aggression, on the other hand, is." So somehow, A, B, C prevailed and it ended up with a manslaughter.

There are a couple of cases that I perhaps should refer to finally, and I thank Kelly J for, *Mengel v The Northern Territory* where Austin had to consider what was referred to as just about every possible cause of action known for law of torts by the plaintiff.

For those who came in lately, to use the (inaudible) expression, that was all about an elimination of TB in the Territory and it was found by Austin that Territory stock inspectors had no power to do what they were doing, which was imposing restrictions on the movement of cattle.

Everything failed, but Austin found for the plaintiff supplying what he referred to as, "the Beaudesert principle", which was from the High Court decision of *Beaudesert Shire Council v Smith*. So the plaintiffs prevailed until the High Court decided they'd made a grave error in the case of *Beaudesert Shire Council v Smith*, and therefore reversed the decision, which of course was binding on the judges of the Supreme Court. A young Peter Barr then quipped, "I've been through Beaudesert on a tort with no name."

The other case that his Honour was involved in as part of a Court of Appeal was a somewhat epic case for the Northern Territory of Australia in *Sky West Airlines* back in the late eighties. Brian Martin and Gary Downs were appearing for the Territory. Brian, it was a week before he was appointed to the Supreme Court. Dick Conty ended up on the Federal Court, a famous New South Wales rugby league judiciary member, but more particularly famous for leaving on the Friday afternoon and leaving behind his erstwhile junior, Wayne Martin, who became the chief justice in WA.

For those who know Wayne, he needed a compass to navigate his way around Darwin, but we'll leave that to another time in another place. However, the big topic in that case was specific performance and whether or not the Court could compel the Northern Territory government to comply with the contract.

And somewhat wisely, their Honours managed to dodge that decision and leave the Northern Territory to go and negotiate before deciding on what remedies might be appropriate. However, I can still remember young Wayne, after Dick Conty had left, advising the Court that in the event the Territory didn't comply, then the administrators should simply sack the government. That created a little bit of frisson late in the afternoon on a Friday, but we managed to get through that.

Finally, I probably should just talk about what is perhaps known to a number of the people here today, and that is the annual March visit of the Asche family to Victoria. And every year, Austin and Val used to return for what they described as "their missionary activity of persuading the burbs of Victoria that neither he nor Val had lost their marbles in moving to the Northern Territory.

It culminated in the Asche family holding Court in the Savage Club in Melbourne. Now, the Savage Club is far from savage. It was a place for thespians whose predilections were music, art, drama, literature and science. They were all things dear to the heart of Austin. It had been in place since 1894. It had been filled with the Heidelberg school painters in the early days, but moved to these very splendid premises in Banks Place in 1923.

Those premises were purchased by one Robert Menzies on behalf of the club from the Estate of Sir Rupert Clarke. But the circumstances were such, Rupert Clarke had died in 1899, but his mistress hadn't died until 1922 and she'd had a life estate in the property. So Savage Club then decided if it was good enough for Sir Rupert and his mistress, it was good enough for them. So it's a three-storey extravaganza. A number of you have been there.

My final memory of Austin, because he took me there, he said as part of my education. He used to point out that every living editor of The Age was always seated there somewhere, and every lunchtime, there was always steak and kidney pie on the menu, as it had been since 1923.

He gave a presentation on Australian poetry of Kenneth Slessor going forward. It was an evening and one worthy member had a medical episode which required the Victoria ambulance to climb two sets of stairs to remove the patient on a stretcher.

It had been over 15 minutes. Austin then rose and said, "The show must go on." So he continued. In Austin's case, we have had a glorious 99 years. I certainly think it's unlikely I'm ever going to see the calibre of a man like Austin again. The Territory has lost its greatest son.

GRANT CJ: Yes, thank you, Mr Stirk.

We conclude by making a number of further brief acknowledgements. We acknowledge the presence in Court today of the Honourable Natasha Fyles, the former Chief Minister and former Attorney-General of the Northern Territory, and we thank her for her attendance and the respect it shows to Austin's family and to the institution.

We acknowledge the presence of Lorraine Martin who of course had such a long association both with this Court and with Austin and Valerie. We also acknowledge Margaret Babbington, Marianne (Mickie) - Warren and Frieda Evans, all of whom have a long association with this Court and with Austin, and we thank them for their presence and we are honoured by it. And finally, Chris Osborne, who I think was Austin's very last Associate. We honour you and your particular connection to Austin.

As is evident from what has been said by the speakers today, Austin had a deep and enduring commitment to the Northern Territory. His contribution to this community has been beyond measure. In addition to his many professional achievements and his deep learning, he was renowned for his wit and his generosity.

He was always willing to listen to anybody who approached him to seek his advice or just his warm company. His Honour resided in Darwin until his passing and he will be sorely missed by the community.

The Judges of the Court now invite you to join us in the foyer after these proceedings have concluded to continue the celebration of Austin's life.

The Court will now adjourn.

ADJOURNED 4:07 PM INDEFINITELY