The Expansion of Executive Discretion: Implications for the Northern Territory

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5.00pm to 7.00pm
Nitmiluk Lounge
Level 4, Parliament House,
Darwin
Abstract
As we celebrate the 800th anniversary of the sealing of the Magna Carta by King John in 1215, it is ironic that over the last 15 years Australia has seen an unprecedented expansion of the executive power of governments and a corresponding encroachment on individual rights and freedoms.

While it is the natural inclination of all governments to augment their powers, it is the job of Parliament and the courts to provide checks and balances on any overreach. In fact, Parliaments at Federal, State and Territory levels have failed to exercise their traditional restraint to protect common law freedoms and have been compliant in passing laws introduced by governments in the name of national security and public interest.

Senator Cory Bernardi has described this phenomenon as a “power creep”.

Moreover, recent laws such as the Northern Territory’s “paperless arrest” and mandatory sentencing laws oust the role of judges to make individual determinations to the detriment of liberty.

Increasing secrecy, the lack of transparent processes, Captain’s picks, the indefinite administrative detention of the mentally ill, asylum seekers and refugees, and the lack of meaningful access to the courts pose significant threats to Australian democracy.

A belief in a “fair go” provides a cultural expectation that human rights will be protected, but it is no longer enough.

It is time to reopen the national debate about the value of a Federal Charter of Rights to provide the courts with a benchmark against which to measure compliance with fundamental liberties.

Austin Asche AC QC

Austin Asche AC QC was the third Chief Justice of the Supreme Court of the Northern Territory and fifteenth Administrator of the Northern Territory. He was made a Companion of the Order of Australia in 1994. This oration honours the service of Austin Asche AC QC to the people of the Northern Territory and his contribution to the law, to tertiary education and to the community.