

NORTHERN TERRITORY OF AUSTRALIA

RECORDS OF DEPOSITIONS ACT

As in force at 1 July 2013

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2013

RECORDS OF DEPOSITIONS ACT

An Act relating to records of depositions of witnesses in proceedings in certain courts in the Northern Territory

1 Short title

This Act may be cited as the *Records of Depositions Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

court means a court to which this Act applies.

the clerk, in relation to a court, means the clerk of that court or the person exercising the powers, performing the functions and discharging the duties of clerk to that court.

4 Application of Act

This Act applies to and in relation to the following courts:

- (a) the Court of Summary Jurisdiction;
- (b) the Local Court;
- (c) the Youth Justice Court;
- (d) the Coroner's Court;
- (e) the Family Matters Court;
- (f) the Work Health Court;
- (g) the warden's courts.

5 Recording of depositions

- (1) Subject to this section, where a proceeding before a court is conducted in a room that is equipped with sound-recording apparatus that is operative at the commencement of the proceeding, the depositions of a witness in the proceeding shall be recorded by means of the sound-recording apparatus.
- (2) Where a court considers there to be a substantial reason for the depositions of a witness in a proceeding before the court conducted in a room equipped with sound-recording apparatus being recorded by a means other than sound-recording apparatus, the court may direct that the depositions shall be recorded by means of shorthand or in writing and thereupon the depositions shall be recorded accordingly.
- (3) Where a proceeding before a court is conducted:
 - (a) in a room or at another place where there is not any sound-recording apparatus; or
 - (b) in a room that is equipped with sound-recording apparatus that:
 - (i) is not operative at the commencement of the proceeding; or
 - (ii) becomes inoperative in the course of the proceeding,

the depositions of a witness in the proceeding shall be or shall henceforth be, as the case requires, recorded by means of shorthand or in writing as the court directs.

6 Recording of summary of question of law

Where, during the course of a proceeding before a court, a question of law arises in relation to the admissibility of evidence given or to be given by a witness, the court shall:

- (a) if the court considers it desirable; or
- (b) on the application of a party to the proceeding,

cause a brief summary of the question of law, including any submissions or argument and the court's ruling, to be recorded by means of sound-recording apparatus, shorthand or in writing, as the case requires, with the depositions of the relevant witness.

7 Reading and signing of written depositions

- (1) Where the depositions of a witness in a proceeding before a court are recorded in writing, the record of the depositions shall be read over to him or read by him and shall be signed by him and by the person or persons constituting the court.
- (2) If a court so directs, the record of the depositions of a witness in a proceeding before the court recorded in writing shall be read over to him or read by him elsewhere than in the room in which the depositions were recorded.

8 Custody of record

The clerk of a court shall have the custody of the record of the depositions of a witness in a proceeding before the court.

9 Directions for preparation of transcript

The clerk of a court shall give such directions as he considers necessary for ensuring that where a transcript of the record of the depositions of a witness in a proceeding before the court recorded by means of sound-recording apparatus or shorthand is or may be required, a transcript is prepared, and for the purpose of enabling the transcript to be prepared the record shall be produced out of the custody of the clerk.

10 Transcription of record of summary of question of law

A person who, in accordance with the directions of the clerk of a court given under section 9, prepares a transcript of the record of the depositions of a witness in a proceeding before the court recorded by means of sound-recording apparatus or shorthand shall transcribe also any summary of a question of law referred to in section 6 on the record with the depositions.

11 Certification of transcript by preparer or supervisor

Where a transcript of the record of the depositions of a witness in a proceeding before a court is prepared in accordance with the directions of the clerk of the court given under section 9, the person who prepared the transcript or under whose supervision the transcript was prepared shall certify on the transcript by writing under his hand that the transcript is a true transcript of the record of the depositions produced out of the custody of the clerk.

12 Automatic transcription

The clerk of a court shall ensure that a transcript of the record of the depositions of a witness in a proceeding before the court recorded by means of sound-recording apparatus or shorthand is prepared:

- (c) in the case of a proceeding from which an appeal is lodged to the Supreme Court – as soon as practicable after notice of the appeal has been received by the clerk;
- (d) in the case of a proceeding as a result of which a person is committed for trial or sentence for an indictable offence – as soon as practicable after the committal; or
- (e) where a Court of Summary Jurisdiction states a special case under section 162 of the *Justices Act* or reserves a question of law under section 162A of that Act – as soon as practicable after that court or one of the Justices of the Peace for the Territory constituting that court directs that the transcript be prepared,

and for the purpose of enabling the transcript to be prepared the record shall be produced out of the custody of the clerk.

13 Furnishing of copy of depositions

- (1) Subject to subsection (2) and section 14, the clerk of a court, on application in writing, shall:
 - (a) upon payment of the prescribed fee, furnish to the applicant:
 - (i) a copy; or
 - (ii) a copy, certified by writing under the hand of the clerk to be a true copy,of:
 - (iii) a transcript of the record; or
 - (iv) the record,as the case requires, of the depositions of a witness in a proceeding before the court; or
 - (b) if the depositions were recorded by means of sound-recording apparatus and neither the record nor a transcript of the record is available – advise the applicant accordingly.

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- (2) Nothing in subsection (1) requires or permits the clerk of a court to furnish a copy referred to in that subsection to a person, not being a party to the relevant proceeding, unless the clerk or a Stipendiary Magistrate for the Territory is satisfied that there is good reason for the person being furnished with the copy.

14 Availability of depositions in committal proceeding to person committed for trial or sentence

A clerk of a Court of Summary Jurisdiction shall, at the request of a person who has been committed by that court for trial or sentence for an indictable offence, furnish free of charge to that person a copy, certified by writing under the hand of the clerk to be a true copy, of:

- (a) a transcript of the record; or
- (b) the record,

as the case requires, of the depositions of the witnesses in the proceeding as a result of which that person was committed for trial or sentence.

15 Furnishing copy of summary of question of law

A copy referred to in section 13(1) furnished to a person under that section or section 14 shall include any summary of a question of law referred to in section 6 that is on the relevant record with the relevant depositions.

16 Evidentiary value of certified copy, &c., of depositions

- (1) Where a document purports to be:
- (a) a transcript of the record of the depositions of a witness in a proceeding before a court recorded by means of sound-recording apparatus or shorthand and the document bears a certificate that purports to have been given under section 11;
 - (b) a copy of a transcript referred to in paragraph (a) and the document bears a certificate that purports to have been given under section 13(1) or section 14;
 - (c) the record of the depositions of a witness in a proceeding before a court recorded in writing and signed in accordance with section 7; or
 - (d) a copy of the record referred to in paragraph (c) and the document bears a certificate that purports to have been given under section 13(1) or section 14,

the document is evidence that the witness made the depositions.

- (2) Where a document that purports to be a transcript, a copy of a transcript, the record or a copy of the record referred to in subsection (1) is produced out of the custody of the clerk of the court before which the relevant proceeding was conducted and the document is certified by writing under the hand of the clerk to be a true transcript, copy of a transcript, record or copy of the record, as the case requires, the document is evidence that the relevant witness made the relevant depositions.
- (3) Where a record made by means of sound-recording apparatus or shorthand that purports to be the record of the depositions of a witness in a proceeding before a court is produced out of the custody of the clerk of the court, the record is evidence that the witness made the depositions.
- (4) Where:
 - (a) a record made by means of sound-recording apparatus that purports to be the record of the depositions of a witness in a proceeding before a court is produced out of the custody of the clerk of the court; and
 - (b) there is contained, on a track of the magnetic tape parallel to the track on which that record is contained, a record of comments that purport to have been made:
 - (i) at the same time as the first-mentioned record; and
 - (ii) for the purpose of identifying the proceeding or identifying a voice or other matter on the first-mentioned record,

the second-mentioned record is evidence of the identity of the proceeding, that voice or other matter, as the case requires.

17 Application of Act to certain statements made by persons

This Act applies to and in relation to a statement made by a person in pursuance of section 110 of the *Justices Act* or section 29 of the *Coroners Act* as if the statement were depositions of the person.

18 Erasure of sound-record of depositions

The clerk of a court shall cause to be erased the record of the depositions of a witness in a proceeding before the court recorded by means of sound-recording apparatus and any summary of a question of law referred to in section 6 that is on the record with the depositions at or as soon as practicable after the expiration of 12 months from the date of completion of the proceeding.

19 Functions and duties of person operating sound-recording apparatus

A person whose function is to operate sound-recording apparatus to record the depositions of a witness in a proceeding before a court shall:

- (a) ensure that the magnetic tape on which the depositions are to be recorded does not already have any matter recorded on it;
- (b) before, or as soon as practicable after, the commencement of the proceeding, enter in writing on a form approved by the clerk of the court and record on a track of the magnetic tape parallel to the track on which the depositions are to be or are being recorded the following particulars in relation to the proceeding:
 - (i) the title of the court before which the proceeding is to be or is being conducted;
 - (ii) the name or names of the person or persons before whom the proceeding is to be or is being conducted;
 - (iii) the date on which the proceeding is to commence or commenced;
 - (iv) the number of the court room, if any, in which the proceeding is to be or is being conducted;
 - (v) the names of the parties to the proceeding and of their counsel and solicitors, if any;
 - (vi) the case number of the proceeding and the number of any associated court file; and
 - (vii) the number shown on the spool that contains the magnetic tape;

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- (c) during the course of the proceeding, enter in writing on the form referred to in paragraph (b) and record on a track of the magnetic tape parallel to the track on which the depositions are being recorded:
 - (i) the full name of a witness and the date, time and corresponding number shown on the counter of the sound-recording apparatus of:
 - (A) the commencement of his examination-in-chief, cross-examination, re-examination and further examination or questioning (if any) respectively, together with the names of the respective examiners or questioners; and
 - (B) the completion of his depositions; and
 - (ii) the nature of and identification marking on an exhibit;
 - (d) while the depositions are being recorded, make, on a track of the magnetic tape parallel to the track on which the depositions are being recorded, such comments as will enable the person speaking in the proceeding at any particular time to be identified;
 - (e) where an electrical or mechanical failure occurs or other defect becomes apparent in the sound-recording apparatus, draw the failure or defect to the attention of the court and the clerk of the court as soon as he becomes aware of it; and
 - (f) subject to this Act, comply with any directions given to him concerning his function by the court or the clerk of the court.

20 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Records of Depositions Ordinance 1970 (Act No. 44, 1970)***

Assent date	3 December 1970
Commenced	18 December 1970 (<i>Gaz</i> No. 50A, 18 December 1970)

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

Records of Depositions Amendment Act 1983 (Act No. 44, 1983)

Assent date	3 October 1983
Commenced	9 May 1984 (<i>Gaz</i> G18, 9 May 1984, p 6)

Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)

Assent date	5 June 1989
Commenced	s 6: 5 June 1989; rem: 1 January 1991 (s 2, s 2 <i>Small Claims Amendment Act 1988</i> (Act No. 43, 1988), <i>Gaz</i> G17, 3 May 1989, p 2, s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and <i>Gaz</i> G49, 12 December 1990, p 2)

Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)

Assent date 22 September 2005
 Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz G30*, 26 July 2006, p 3)

Antisocial Behaviour (Miscellaneous Amendments) Act 2006 (Act No. 2, 2006)

Assent date 8 March 2006
 Commenced 14 June 2006 (*Gaz G24*, 14 June 2006, p 3)

Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011 (Act No. 19, 2011)

Assent date 20 May 2011
 Commenced 1 July 2011 (*Gaz G23*, 6 June 2011, p 6)

Alcohol Mandatory Treatment Act 2013 (Act No. 17, 2013)

Assent date 28 June 2013
 Commenced 1 July 2013 (s 2)

3 LIST OF AMENDMENTS

- ss 1 – 2 amd No. 14, 1989, s 7
- s 3 amd No. 87, 1973, s 3; No. 14, 1989, s 7
- s 4 sub No. 14, 1989, s 7
- amd No. 2, 2006, s 25; No. 33, 2005, s 5; No. 19, 2011, s 46; No. 17, 2013, s 173
- ss 10 – 11 amd No. 87, 1973, s 3
- s 12 amd No. 87, 1973, s 7; No. 14, 1989, s 7
- s 13 amd No. 87, 1973, s 3
- s 15 amd No. 87, 1973, s 3; No. 14, 1989, s 7
- s 16 amd No. 87, 1973, s 3; No. 14, 1989, s 7
- s 17 amd No. 87, 1973, s 7; No. 14, 1989, s 7
- s 18 amd No. 87, 1973, s 3
- s 19 amd No. 87, 1973, s 3; No. 14, 1989, s 7
- s 20 amd No. 87, 1973, ss 3 and 5
- sub No. 44, 1983, s 4