



# NORTHERN TERRITORY OF AUSTRALIA

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No. 39 of 1988

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## AN ACT

to amend the *Oaths Act*

[Assented to 14 September 1988]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Oaths Amendment Act 1988*.

2. COMMENCEMENT

The several sections of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Oaths Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 4 of the Principal Act is amended -

(a) by omitting the definition of "Court" and substituting the following:

"'Court' means any person, court, board, tribunal or other body who or which, by law or consent of parties, may take evidence on oath;

'declaration' means a statutory declaration or an unattested declaration;" and

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- (b) by omitting the definition of "Judge" and substituting the following:

"'Judge' includes a person constituting, or member of, a Court which has authority to admit evidence;".

### 5. OMISSION AND SUBSTITUTION

The Principal Act is amended by omitting the heading to Part II and substituting the following:

"PART II - OATHS AND AFFIRMATIONS".

### 6. OATHS TO BE TAKEN BY JUSTICES

Section 7 of the Principal Act is amended by omitting "or a Special Magistrate".

### 7. AFFIDAVITS MAY BE SWORN BEFORE JUSTICE

Section 13 of the Principal Act is amended by omitting "any Justice without the issue of any commission for taking affidavits" and substituting "a Justice or a Commissioner for Oaths".

### 8. REPEAL AND SUBSTITUTION

Sections 14 and 15 of the Principal Act are repealed and the following substituted:

#### "15. JUDICIAL NOTICE OF SIGNATURE OF PERSON BEFORE WHOM AFFIDAVIT SWORN

"Judicial and official notice shall be taken of the signature of a person before whom an affidavit may be sworn if the signature is contained in or subscribed to an affidavit purporting to be sworn before that person.".

### 9. OFFENCES

Section 16(2) of the Principal Act is amended by omitting the penalty and substituting the following:

"Penalty: \$2,000 or imprisonment for 12 months.".

### 10. REPEAL AND SUBSTITUTION

Sections 17, 17A, 18 and 20 are repealed and the following substituted:

#### "17. COMMISSIONER FOR OATHS

"(1) The following persons, by virtue of their office or position, are Commissioners for Oaths:

- (a) a member of the Legislative Assembly;

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- (b) a member of either house of the Parliament of the Commonwealth elected to represent the Territory or a constituency in the Territory;
- (c) a legal practitioner who holds, or shall be deemed to hold, a current practising certificate under the *Legal Practitioners Act*;
- (d) the Master and a Deputy Master of the Supreme Court; and
- (e) a member of the Police Force who has attained the age of 18 years.

"(2) The Minister may, by notice in the *Gazette*, appoint a person to be a Commissioner for Oaths for such period, not exceeding 5 years, as is specified in the notice.

"(3) The Minister may, at any time, in his absolute discretion, by notice in the *Gazette*, terminate an appointment under subsection (2).

### "18. POWERS OF COMMISSIONER FOR OATHS

"(1) A Commissioner for Oaths may -

- (a) administer an oath;
- (b) take an affidavit; or
- (c) attest the execution of an instrument,

for the purposes of a law in force in the Territory.

"(2) After witnessing the signing of a document or attesting the execution of an instrument, Commissioners for Oaths shall legibly write, type or stamp their name and contact address or telephone number below their own signature.

### "19. JUDICIAL NOTICE OF SIGNATURE

"Judicial notice shall be taken of the signature of a Commissioner for Oaths if it is contained in or subscribed to -

- (a) an affidavit purporting to be sworn before that Commissioner; or
- (b) an instrument containing a signature purporting to be attested by that Commissioner.

### "20. CIRCUMSTANCES WHERE COMMISSIONER MAY NOT ACT

"A Commissioner for Oaths shall not knowingly -

- (a) administer an oath;

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(b) take an affidavit; or

(c) attest the execution of an instrument,

where that activity may confer, or have the effect of conferring, on the Commissioner or the Commissioner's employer a direct or indirect benefit by way of the abandonment of a legal right or interest to which the person making the oath or affidavit or attesting the execution of the instrument would otherwise be entitled."

### 11. REPEAL AND SUBSTITUTION

Sections 23C and 23D of the Principal Act are repealed and the following substituted:

#### "23C. FORM OF STATUTORY DECLARATION

"(1) A statutory declaration may be in accordance with the form in Schedule 8 and shall -

(a) contain an acknowledgement that it is true in every particular and a statement to the effect that the person making a false declaration is guilty of an offence; and

(b) be signed by the person making it in the presence of a person who has attained the age of 18 years.

"(2) After witnessing the signing of a statutory declaration, the person by whom it is witnessed shall legibly write, type or stamp their name and contact address or telephone number below their own signature.

#### "23D. UNATTESTED DECLARATION

"(1) A person may make an unattested declaration in relation to a matter for which a law in force in the Territory or an agreement, custom or practice authorizes or permits an unattested declaration to be made.

"(2) An unattested declaration may be made in accordance with the form in Schedule 10 and shall contain an acknowledgement that it is true in every particular and a statement to the effect that a person making a false declaration is guilty of an offence.

#### "23E. ANNEXATION CLAUSE

"A person who makes a statutory declaration or an unattested declaration may identify anything referred to in that declaration by attaching to the thing to be identified an annexation clause made in accordance with the form in Schedule 9 and, in the case of a statutory declaration, signed by the person before whom the declaration is made.

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### "23F. FALSE STATEMENTS IN DECLARATIONS

"A person shall not make a false statement in a statutory declaration or unattested declaration.

Penalty: \$2,000 or imprisonment for 12 months."

### 12. REPEAL

Section 25B of the Principal Act is repealed.

### 13. TAKING OATHS AND AFFIDAVITS OUT OF THE TERRITORY

Section 27(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following:

"(a) a Commissioner for Affidavits (by whatever name called) empowered and authorized to act in that place;".

### 14. NEW SECTION

The Principal Act is amended by inserting after section 28 the following:

### "29. REGULATIONS

"The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular providing for the issuing of certificates of appointment of Commissioners for Oaths."

### 15. SCHEDULE 8

Schedule 8 to the Principal Act is amended -

(a) by omitting "\$1000 or imprisonment for 6 months" and substituting "\$2,000 or imprisonment for 12 months"; and

(b) by omitting "(5) Title of the person before whom the declaration is made" and substituting the following:

"(5) Name and contact address or telephone number of person before whom the declaration is made legibly written, typed or stamped.

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"(6) This declaration may be made before any person who has attained the age of 18 years."

### 16. SCHEDULE 9

Schedule 9 to the Principal Act is amended -

- (a) by omitting "Section 23C(2)" and substituting "Section 23E";
- (b) by omitting "statutory declaration" and substituting "statutory declaration [or declaration, as the case requires]"; and
- (c) by omitting "(4) Title of person before whom the declaration is made" and substituting the following:

"(4) In the case of a statutory declaration, the name and contact address or telephone number of person before whom the declaration is made legibly written, typed or stamped."

### 17. NEW SCHEDULE

The Principal Act is amended by adding at the end of the Schedules the following:

#### "SCHEDULE 10

##### "Oaths Act

##### "UNATTESTED DECLARATION

##### Section 23D

"I, (1) do solemnly and sincerely  
declare (2)

And I make this solemn declaration by virtue of the Oaths Act conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at  
the day of , 19  
(3)

NOTE: A person wilfully making a false statement in a declaration is liable to a penalty of \$2,000 or imprisonment for 12 months, or both.

(1) Name and address of person making the declaration

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(2) Here insert the matter declared to either directly following the word "declare" or, if the matter is lengthy, insert the words "as follows" and thereafter set out the matter in numbered paragraphs

(3) Signature of the person making the declaration".

### 18. TRANSITIONAL

(1) Where immediately before the commencement of this Act a person held office as a Commissioner for Affidavits under the Principal Act that person shall, on the commencement of this Act (unless he or she then becomes a Commissioner for Oaths by virtue of his or her office or position), be a Commissioner of Oaths as if appointed under section 17(2) of the Principal Act as amended by this Act for a period of 5 years from the commencement of this Act.

(2) For the avoidance of doubt, the office of Commissioner for Affidavits ceases to exist on the commencement of section 8 of this Act.

(3) Where immediately before the commencement of this Act a person held office as a Commissioner for Oaths under the Principal Act, having been appointed to that office before 1 January 1982, that person shall, on the commencement of this Act (unless he or she then becomes a Commissioner for Oaths by virtue of his or her office or position), be a Commissioner of Oaths as if appointed under section 17(2) of the Principal Act as amended by this Act for a period of 12 months from the commencement of this Act.

(4) Where immediately before the commencement of this Act a person held office as a Commissioner for Oaths under the Principal Act, having been appointed to that office on or after 1 January 1982, that person shall, on the commencement of this Act (unless he or she then becomes a Commissioner for Oaths by virtue of his or her office or position), be a Commissioner of Oaths as if appointed under section 17(2) of the Principal Act as amended by this Act for a period of 2 years from the commencement of this Act.

(5) Where during the time a person is a Commissioner for Oaths by virtue of subsection (3) or (4) he or she is or becomes a Commissioner for Oaths also by virtue of his or her office or position and subsequently ceases to hold or occupy that office or position, that person, on so ceasing to hold or occupy the office or position, ceases to hold office as a Commissioner for Oaths in either capacity.

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(6) Notwithstanding section 23C of the Principal Act as amended by this Act, a statutory declaration may be made, and shall be accepted, in a form and in accordance with the law in force immediately before the commencement of this Act if made before 1 January 1989.

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