



NORTHERN TERRITORY OF AUSTRALIA

No. 23 of 1982

AN ACT

To amend the *Evidence Act*

[Assented to 27 April 1982]

BE 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 *Evidence Amendment Act 1982*.

2. NEW PART

The *Evidence Act* is amended by inserting after Part IV the following:

"PART IVA - CROWN PRIVILEGE

"42C. DEFINITIONS

"In this Part, unless the contrary intention appears, 'disclosure' includes disclosure by -

- (a) the production or discovery of documents;
- (b) the giving of evidence;
- (c) the answering of interrogatories; and
- (d) the furnishing of particulars.

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"42D. CERTIFICATE OF ATTORNEY-GENERAL

"(1) Where the Attorney-General certifies in writing that, in his opinion, the disclosure of the contents of a document or record in legal proceedings described in the certificate is not in the public interest -

(a) because it would involve the disclosure of communications between -

(i) the Executive Council, or a member thereof, and the Administrator;

(ii) a Minister and a Minister of the Commonwealth or of a State; or

(iii) a Commonwealth Minister and a Minister of a State; or

(b) because it would involve the disclosure of deliberations or decisions of, or matters presented to or considered by -

(i) the Executive Council or a committee of the Executive Council; or

(ii) the Territory Cabinet or a committee of the Territory Cabinet,

the document or record shall not be disclosed in or in relation to, or be admissible as evidence in, those legal proceedings.

"(2) A certificate under sub-section (1) shall, without a Court having examined a document or heard a record to which it relates or having inquired into the power of the Attorney-General to give the certificate, be accepted in legal proceedings described in the certificate as conclusive that the document or record is of the kind referred to in sub-section (1) and that its disclosure in the legal proceedings is not in the public interest.

"42E. ATTORNEY-GENERAL TO BE GIVEN OPPORTUNITY TO GIVE CERTIFICATE

"(1) Subject to this section, a document or record shall not be disclosed in or in relation to, or be admissible as evidence in, legal proceedings if -

(a) it appears to the person presiding in the Court before which the legal proceedings are held or taken that it is of a kind in respect of which a certificate under section 42D(1) could be given if the Attorney-General were of the opinion that its disclosure in the legal proceedings is not in the public interest; and

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- (b) the Attorney-General has not had an opportunity to give a certificate under section 42D(1) in relation to it.

"(2) A statement by a person called upon to produce a document or record in or in relation to legal proceedings that -

- (a) the document or record is of a kind referred to in sub-section (1)(a); and
- (b) in respect of that document or record the Attorney-General has not had an opportunity to give a certificate under section 42D(1),

shall be accepted by the person presiding in the Court before which the legal proceedings are held or taken as conclusive of that first-mentioned fact and prima facie evidence of the second-mentioned fact.

"(3) Sub-section (1) does not apply to a document or record the publication of which has previously been duly authorized.

"(4) Subject to sub-section (2), sub-section (1) does not prevent a document or record from being disclosed in or in relation to legal proceedings so far only as the disclosure is made to the person presiding in the Court before which those legal proceedings are held or taken and is necessary to enable the person to decide whether the document or record is of a kind referred to in sub-section (1)(a) and, if so, whether or not it is a document or record referred to in sub-section (3).

"(5) The practice and procedure of a Court for or in respect of the giving to the Attorney-General of notice relating to the disclosure of a document or record in or in relation to legal proceedings shall be -

- (a) where there is a power to make rules of court for or in respect of the practice and procedure of that Court and such rules are in force - in accordance with those rules of court; and
- (b) where there is no such power or the power has not been exercised - in accordance with the Regulations.

"(6) The Administrator may make regulations for the purposes of sub-section (5)(b).

"42F. CERTAIN ORAL EVIDENCE NOT TO BE GIVEN

"(1) Except with the approval in writing of the Attorney-General, a person called upon to give evidence in legal proceedings shall not give evidence or be a compellable witness in relation to the giving of evidence

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which, if it had been reduced to writing, would constitute a document in respect of which a certificate under section 42D(1)(b) could be given if the Attorney-General were of the opinion that its disclosure in the legal proceedings is not in the public interest.

"(2) Except with the approval in writing of the Attorney-General, evidence of a kind referred to in sub-section (1) shall not be admissible in legal proceedings.

"(3) A statement by the person called upon to give evidence that the evidence if given would be of a kind to which this section applies shall, without the Court having heard the evidence if the statement is accompanied by a certificate of the Attorney-General, be accepted by the person presiding in the Court before which the legal proceedings are held or taken as conclusive that the evidence is of that kind.

"42G. THIS PART NOT TO LIMIT OTHER LAWS

"Except in relation to documents or records in respect of which a certificate has been given under section 42D(1), or evidence of a kind to which section 42F applies, nothing in this Part affects the prerogatives of the Crown or the operation of any law requiring a Court to prohibit the disclosure of a written or oral communication on the grounds that it is in the public interest to do so."
