

Serial 118
Oaths, Affidavits and Declarations Bill 2010
Ms Lawrie

A Bill for an Act about oaths, affidavits and declarations

NORTHERN TERRITORY OF AUSTRALIA

OATHS, AFFIDAVITS AND DECLARATIONS ACT 2010

Act No. [] of 2010

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1
3	Definitions.....	1
4	Application of Criminal Code	2

Part 2 Oaths

5	Form and content of oath	2
6	Who may administer oath.....	3
7	How oath to be administered in court or tribunal	3
8	How oath to be administered in other cases.....	4
9	Other Acts may provide for form and administration of oath.....	4
10	Alternative form and administration of oath	4
11	Minor non-compliance does not affect validity.....	5

Part 3 Affidavits

12	How affidavit to be made	5
13	Who may witness affidavit	7
14	Other Acts may provide for how affidavit to be made	7

Part 4 Statutory and unattested declarations

15	When declaration may be made	7
16	Form of declaration.....	8
17	Written statutory declaration	8
18	Recorded statutory declaration.....	9
19	Unattested declarations	10
20	Other Acts may provide for how declaration to be made	10

Part 5 Commissioners for oaths

21	Commissioners for oaths.....	10
22	Powers of commissioner for oaths.....	11

Part 6	Miscellaneous	
23	Counter-signing other document or notarial act done out of Territory	11
24	Evidentiary matters – facilitation of proof	12
25	Altering an affidavit or declaration to become false or misleading	12
26	Competence of witness unable to understand nature of oath.....	13
27	Regulations.....	14
Part 7	Repeals and transitional matters	
Division 1	Repeals	
28	Acts repealed.....	14
Division 2	Transitional matters for Oaths, Affidavits and Declarations Act 2010	
29	Definitions.....	14
30	Commissioners for oaths.....	14
31	Oaths, affidavits and declarations taken or made before commencement	14
32	Declarations using forms under repealed Act.....	15
Schedule 1	Content of oath	
Schedule 2	Repealed Acts	



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

An Act about oaths, affidavits and declarations

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Oaths, Affidavits and Declarations Act 2010*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

commissioner for oaths means a person who is a commissioner for oaths under section 21.

consular official means:

- (a) an Australian Consular Officer or Australian Diplomatic Officer, as defined in section 2 of the *Consular Fees Act 1955* (Cth); or
- (b) a person authorised, as mentioned in section 3(c) or (d) of the *Consular Fees Act 1955* (Cth), to administer an oath.

defence force officer means:

- (a) an officer of the Australian Navy who holds the rank of Lieutenant or a higher rank; or
- (b) an officer of the Australian Army who holds the rank of Captain or a higher rank; or
- (c) an officer of the Australian Air Force who holds the rank of Flight-Lieutenant or a higher rank.

tribunal means an individual or body, other than a court, authorised by law or consent of parties to take evidence on oath or otherwise gather information on oath.

4 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 4

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Oaths

5 Form and content of oath

- (1) If, under a law in force in the Territory, a person is to take an oath, the form of the oath must be the words "I promise ..." followed by the content of the oath.
- (2) The content of the oath is to be:
 - (a) if the oath is required under an Act that provides for the content of the oath – as so provided; or
 - (b) if the oath is to be made by a person mentioned in Schedule 1 and paragraph (a) does not apply – as set out in Schedule 1 for that person; or
 - (c) in any other case – as determined by the person administering the oath to be appropriate in the circumstances.

6 Who may administer oath

- (1) An oath taken at a place in the Territory must be administered by one of the following:
 - (a) if the oath is taken by a person who is in court:
 - (i) the presiding officer of the court; or
 - (ii) if it is not reasonably practicable for the presiding officer to administer the oath – a person authorised by the presiding officer to do so;
 - (b) if the oath is taken by a person who is before a tribunal:
 - (i) if the tribunal is or is constituted by a single individual – the tribunal; or
 - (ii) if the tribunal is constituted by 2 or more members – one of the sitting members of the tribunal;
 - (c) if neither paragraph (a) nor (b) apply:
 - (i) a justice of the peace; or
 - (ii) a commissioner for oaths;
 - (d) in any case – any other person authorised by an Act to administer the oath.
- (2) An oath taken at a place outside the Territory for the purposes of a matter in the Territory must be administered by one of the following:
 - (a) a person who has authority, under the law of the place, to administer an oath, take an affirmation or carry out a comparable process;
 - (b) a consular official who is performing official functions at the place;
 - (c) if the person taking the oath is a member of the Australian Defence Force – a defence force officer;
 - (d) any other person authorised by an Act to administer the oath.

7 How oath to be administered in court or tribunal

- (1) If an oath is to be taken by a person (**person A**) who is in court or before a tribunal, the person administering the oath is to ask person A "Do you promise [*content of oath*]?".

- (2) Person A takes the oath if he or she gives an unconditional affirmative answer.
- (3) Person A is taken to have refused to take the oath if he or she:
 - (a) gives any other answer; or
 - (b) refuses to answer.

8 How oath to be administered in other cases

If an oath is to be taken by a person (**person A**) who is not in court or before a tribunal, the person administering the oath (**person B**) is to require person A, in the presence of person B, to say aloud the words of the oath either by repeating them after person B or by reading them.

Note for section 8

If person A is unable to say the words aloud, the oath may be administered in a different way under section 10.

9 Other Acts may provide for form and administration of oath

- (1) Sections 5 to 8 do not affect any other Act that expressly provides:
 - (a) for a person to take an oath in a different form; or
 - (b) for an oath to be administered by a different person; or
 - (c) for an oath to be administered in a different way.
- (2) However if, under another Act, a person is required to take an oath in a form that involves a reference to God or otherwise has any religious connotations, the person may choose to take the oath in the form provided by section 5(1) instead.
- (3) If another Act provides for a different form of oath but does not provide for how it is to be administered, the oath is to be administered as nearly as practicable in a way provided by section 7 or 8 (as appropriate).

10 Alternative form and administration of oath

Despite sections 5, 7 and 8, a person taking an oath (**person A**) may take the oath in any form, or have it administered in any way, person A wants if the person administering the oath is satisfied person A:

- (a) understands the consequences of taking an oath; and

- (b) is taking the oath honestly and in good faith intending to be bound by it.

11 Minor non-compliance does not affect validity

- (1) Inadvertent non-compliance with a formal requirement that does not materially affect the nature of the oath does not invalidate or otherwise affect the force and effect of the oath.
- (2) In this section:

formal requirement means a requirement imposed by this or any other Act about:

- (a) the form or content of an oath; or
- (b) the way in which an oath is to be administered.

Part 3 Affidavits

12 How affidavit to be made

- (1) An affidavit for any purpose in the Territory must be made in accordance with this section.
- (2) The affidavit must set out the full name of the person making it.
- (3) The affidavit must conclude with a statement:
 - (a) that the affidavit is made by the person making it in the presence of an authorised witness; and
 - (b) setting out the place where, and the date when, the affidavit is made.
- (4) An attachment to the affidavit must include on its front page a statement identifying it as the attachment referred to in the affidavit.
- (5) The person making the affidavit must:
 - (a) sign the affidavit immediately after the statement required by subsection (3); and
 - (b) sign each other page of the affidavit; and
 - (c) sign or initial any alteration made to the affidavit; and

- (d) in the presence of an authorised witness, say orally on oath, that:
 - (i) he or she is the person named as the maker of the affidavit; and
 - (ii) the contents of the affidavit are true; and
 - (iii) the signature is his or hers; and
- (iv) if necessary, any attachment to the affidavit is the attachment referred to in it.

Note for subsection (5)

Subsection (5)(a), (b) and (c) need not be complied with in the presence of an authorised witness.

- (6) After the person making the affidavit has complied with subsection (5)(d), the authorised witness must:
 - (a) under or near the statement required by subsection (3):
 - (i) sign the affidavit; and
 - (ii) write his or her:
 - (A) full name; and
 - (B) qualification as an authorised witness; and
 - (C) address or telephone number; and
 - (b) sign each other page of the affidavit; and
 - (c) sign or initial any alteration made to the affidavit that has been signed or initialled by the maker; and
 - (d) for any attachment identified under subsection (5)(d)(iv) – sign or initial the attachment under or near the statement required by subsection (4).
- (7) In this section:

authorised witness, for an affidavit, means a person who is authorised under section 13 to witness the affidavit.

13 Who may witness affidavit

- (1) An affidavit made at a place in the Territory must be witnessed by one of the following:
 - (a) a justice of the peace;
 - (b) a commissioner for oaths;
 - (c) any other person authorised by an Act to witness the affidavit.
- (2) An affidavit made at a place outside the Territory must be witnessed by one of the following:
 - (a) a person who has authority under the law of the place:
 - (i) to administer an oath, take an affirmation or carry out a comparable process; or
 - (ii) to witness the making of an affidavit or comparable document;
 - (b) a consular official who is performing official functions at the place;
 - (c) if the person making the affidavit is a member of the Australian Defence Force – a defence force officer;
 - (d) any other person authorised by an Act to witness the affidavit.

14 Other Acts may provide for how affidavit to be made

Sections 12 and 13 do not affect any other Act that expressly provides for an affidavit:

- (a) to be made in a different way; or
- (b) to be witnessed by a different person.

Part 4 Statutory and unattested declarations**15 When declaration may be made**

- (1) A person may make a statutory declaration or unattested declaration about any matter at any time.
- (2) Subsection (1) does not affect:
 - (a) any other Act that requires a person to make a statutory declaration or unattested declaration about a matter; or

- (b) any law in force in the Territory as to the purposes for which a statutory declaration or unattested declaration may be used.

16 Form of declaration

- (1) If a person is to make a statutory declaration or unattested declaration, the form of the declaration must be the words "I solemnly and sincerely declare ..." followed by the content of the declaration.
- (2) A statutory declaration must be made:
 - (a) in writing under section 17; or
 - (b) as a recording under section 18.
- (3) An unattested declaration must be made in writing under section 19.

17 Written statutory declaration

- (1) A written declaration must set out the full name of the person making it.
- (2) A written statutory declaration must conclude with a statement:
 - (a) that the declaration is true; and
 - (b) to the effect that the person making the declaration knows it is an offence to make a statutory declaration that is false in any material particular; and
 - (c) setting out the place where, and the date when, the declaration is made.
- (3) An attachment to the statutory declaration must include on its front page a statement identifying it as the attachment referred to in the declaration.
- (4) The person making the declaration must, in the presence of an adult witness:
 - (a) sign the declaration immediately after the statement required by subsection (2); and
 - (b) for any attachment to the declaration – identify it to the witness as the attachment referred to in the declaration.

- (5) After the person making the declaration has complied with subsection (4), the witness must:
- (a) under or near the maker's signature:
 - (i) sign the declaration; and
 - (ii) write his or her:
 - (A) full name; and
 - (B) address or telephone number; and
 - (b) for any attachment identified under subsection (4)(b) – sign or initial the attachment under or near the statement required by subsection (3).

18 Recorded statutory declaration

- (1) A statutory declaration may be made as an audio or audio-visual recording of any kind.
- (2) The declaration must include a statement of the full name of the person making it.
- (3) The person making the declaration must make a statement at the end of the recording:
- (a) that the declaration is true; and
 - (b) to the effect that the person knows it is an offence to make a statutory declaration that is false in any material particular; and
 - (c) setting out the place where, and the date when, the statement required by this subsection is recorded.
- (4) The statement required by subsection (3) must be recorded in the presence of an adult witness.

Note for subsection (4)

The witness does not have to be present for the making of the rest of the declaration recording.

- (5) After the person making the declaration has recorded the statement required by subsection (3), the witness must make a statement, at the end of the recording, stating:
- (a) his or her full name and address or telephone number; and

- (b) that he or she witnessed the recording of the statement required by subsection (3).

19 Unattested declarations

- (1) An unattested declaration must set out the full name of the person making it.
- (2) An unattested declaration must conclude with a statement:
 - (a) that the declaration is true; and
 - (b) to the effect that the person making the declaration knows it is an offence to make a declaration that is false in any material particular; and
 - (c) setting out the place where, and the date when, the declaration is made.
- (3) The person making the declaration must sign the declaration.

Note for section 19

An unattested declaration does not have to be witnessed.

20 Other Acts may provide for how declaration to be made

Sections 16 to 19 do not affect any other Act that expressly provides for:

- (a) a statutory declaration or unattested declaration to be made in a different way; or
- (b) a statutory declaration to be witnessed by a particular person or class of persons.

Part 5 Commissioners for oaths

21 Commissioners for oaths

- (1) Each of the following is a commissioner for oaths:
 - (a) a member of the Legislative Assembly;
 - (b) a member of the Commonwealth Senate who represents the Territory;
 - (c) a member of the Commonwealth House of Representatives who represents an electorate in the Territory;
 - (d) a legal practitioner;

- (e) a police officer;
 - (f) a person appointed under subsection (2).
- (2) The Minister may, in writing, appoint a person to be a commissioner for oaths for a period specified in the appointment and not exceeding 5 years.

22 Powers of commissioner for oaths

- (1) A commissioner for oaths may do any of the following for a law of the Territory:
- (a) administer an oath;
 - (b) witness an affidavit;
 - (c) attest the execution of any other document.
- (2) After attesting the execution of a document, a commissioner for oaths must:
- (a) sign the document; and
 - (b) write his or her:
 - (i) full name; and
 - (ii) qualification as a commissioner for oaths; and
 - (iii) address or telephone number.

Part 6 Miscellaneous

23 Counter-signing other document or notarial act done out of Territory

- (1) If a person makes a relevant document at a place outside the Territory, the document may be counter-signed by any person who could, under section 13(2), witness the document if it were being made as an affidavit.
- (2) If it is necessary for any purpose in the Territory for a notarial act to be done at a place outside the Territory, the notarial act may be done by any person who could, under section 13(2), witness the making of an affidavit at the place by the person for whom the notarial act is to be done.

(3) In this section:

counter-sign, for a document, means:

- (a) witness the execution of the document; or
- (b) verify or acknowledge the document; or
- (c) otherwise sign the document in a capacity other than as the maker of the document.

notarial act, for a place outside the Territory, means anything a notary public may do at the place under any law, custom or otherwise.

relevant document means a document that is required under an Act, or for any other purpose in the Territory, to be counter-signed.

24 Evidentiary matters – facilitation of proof

It is presumed, unless the contrary is proved, that:

- (a) an affidavit purporting to have been witnessed in accordance with sections 12 and 13 was so witnessed; and
- (b) a document purporting to have been attested by a commissioner for oaths was so attested; and
- (c) a relevant document, as defined in section 23, purporting to have been counter-signed in accordance with that section was so counter-signed.

25 Altering an affidavit or declaration to become false or misleading

- (1) A person must not do anything to an affidavit, statutory declaration or unattested declaration that results in it becoming false or misleading.

Fault elements:

The person:

- (a) intentionally does the thing; and
- (b) in doing the thing, intends the affidavit or declaration to become false or misleading.

Maximum penalty: 400 penalty units or imprisonment for 4 years.

- (2) A person must not do anything to an affidavit, statutory declaration or unattested declaration that results in it becoming false or misleading.

Fault elements:

The person:

- (a) intentionally does the thing; and
- (b) in doing the thing, is reckless as to whether the affidavit or declaration becomes false or misleading.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) If on the trial of a person charged with an offence against subsection (1) the trier of fact is not satisfied the person committed the offence but is satisfied the person committed an offence against subsection (2):

- (a) the trier of fact may find the person not guilty of the offence charged but guilty of the offence under subsection (2); and
- (b) the person is liable to punishment accordingly.

26 Competence of witness unable to understand nature of oath

- (1) This section applies if:
- (a) a person (the **witness**) is required to give evidence on oath before a court or tribunal; and
 - (b) the court or tribunal is satisfied the witness is incapable of understanding the nature of an oath; and
 - (c) the court or tribunal is satisfied the witness:
 - (i) if at least 14 years of age – understands he or she may be punished if he or she gives evidence that is false; or
 - (ii) if under 14 years of age – is capable of giving an intelligible account of his or her experience.
- (2) The court or tribunal may permit the witness to give evidence without taking an oath.
- (3) Evidence given under subsection (2) is taken to have been given on oath.

- (4) This section does not affect any rule of law or practice relating to the corroboration of evidence.
- (5) This section also applies with any necessary changes to a person who is to act as an interpreter in a court or tribunal.

27 Regulations

The Administrator may make regulations under this Act.

Part 7 Repeals and transitional matters

Division 1 Repeals

28 Acts repealed

The Acts specified in Schedule 2 are repealed.

Division 2 Transitional matters for Oaths, Affidavits and Declarations Act 2010

29 Definitions

In this Division:

commencement means the commencement of section 28.

repealed Act means the *Oaths Act* as in force from time to time before the commencement.

30 Commissioners for oaths

- (1) This section applies to a person who was a Commissioner for Oaths under section 17(2) of the repealed Act immediately before the commencement.
- (2) The person continues to be a commissioner for oaths until the end of the person's term of appointment under the repealed Act as if the person had been appointed under section 21(2) of this Act.

31 Oaths, affidavits and declarations taken or made before commencement

An oath, affidavit or declaration sworn or made before the commencement is as valid and effective after the commencement as it would have been had this Act and the *Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* not commenced.

32 Declarations using forms under repealed Act

- (1) A statutory declaration made in the form in Schedule 8 to the repealed Act is taken to comply with sections 16(1) and 17(2).
- (2) An annexure to a statutory declaration to which is attached an annexure clause in the form in Schedule 9 to the repealed Act is taken to comply with section 17(3).
- (3) An unattested declaration made in the form in Schedule 10 to the repealed Act is taken to comply with sections 16(1) and 19(2).
- (4) This section expires 2 years after commencement.

Schedule 1 Content of oath

section 5(2)(b)

	Person taking oath	Content of oath I promise ...
1.	Person who is to give evidence on oath in court	... to tell the truth to this court.
2.	Person who is to give evidence on oath before a tribunal	... to tell the truth <i>[to this tribunal to this Board at this hearing etc., as appropriate].</i>
3.	Person who is to answer questions put by a tribunal conducting an investigation or examination	... to answer truthfully all questions put to me <i>[by the tribunal by the Board at this hearing etc., as appropriate].</i>
4.	Person who is to act as interpreter in court or tribunal	... to well and truly interpret the evidence to be given and do all other matters and things required of me in this case to the best of my ability.
5.	Person making affidavit	... that: <i>[as required by section 12(5)(d)].</i>
6.	Person taking oath of office	... to perform the functions of the office of <i>[name of office]</i> lawfully, impartially and in good faith.

Schedule 2 Repealed Acts

section 28

<i>Oaths Ordinance 1939</i>	Act No. 23 of 1939
<i>Oaths Ordinance 1952</i>	Act No. 2 of 1952
<i>Oaths Ordinance 1953</i>	Act No. 13 of 1953
<i>Oaths Ordinance 1960</i>	Act No. 14 of 1960
<i>Oaths Ordinance 1965</i>	Act No. 34 of 1965
<i>Oaths Ordinance 1967</i>	Act No. 24 of 1967
<i>Oaths Ordinance 1970</i>	Act No. 63 of 1970
<i>Oaths Ordinance 1978</i>	Act No. 22 of 1978
<i>Oaths Amendment Act 1981</i>	Act No. 35 of 1981
<i>Oaths Amendment Act 1988</i>	Act No. 39 of 1988
<i>Oaths Amendment Act 1989</i>	Act No. 1 of 1989
<i>Oaths Amendment Act 1991</i>	Act No. 49 of 1991
<i>Oaths Amendment Act 1993</i>	Act No. 81 of 1993
<i>Oaths Amendment Act 1994</i>	Act No. 15 of 1994
<i>Oaths Amendment Act 2000</i>	Act No. 47 of 2000
