

Serial 111
Courts Legislation Amendment Bill 2019
Ms Fyles

A Bill for an Act to amend the *Administration and Probate Act 1969*, the *Electronic Transactions (Northern Territory) Act 2000*, the *Local Court Act 2015* and the *Supreme Court Act 1979* to provide for electronic filing and case management in the Supreme Court and the Local Court

NORTHERN TERRITORY OF AUSTRALIA
COURTS LEGISLATION AMENDMENT ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Administration and Probate Act 1969*, the *Electronic Transactions (Northern Territory) Act 2000*, the *Local Court Act 2015* and the *Supreme Court Act 1979* to provide for electronic filing and case management in the Supreme Court and the Local Court

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Courts Legislation Amendment Act 2019*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Administration and Probate Act 1969

3 Act amended

This Part amends the *Administration and Probate Act 1969*.

4 Section 110A amended (Administration of small estate without representation or election)

- (1) Section 110A(2), (5), (6) and (7)

omit

he or she

insert

the representative

- (2) Section 110A(2)

omit

his or her

insert

the representative's

- (3) Section 110A(7), after "Registrar"

insert

, unless exempted under the Rules

5 Section 111 replaced

Section 111

repeal, insert

111 Reseal of grant made in certain countries

- (1) This section applies if a court of competent jurisdiction in a relevant country has, whether before or after the commencement of this Act, granted probate of a will, administration of an estate or an order to collect and administer an estate.
- (2) The following persons may, after producing the probate, administration or order referred to in subsection (1) to the Registrar and depositing a copy of it with the Registrar, apply to the Court to have it sealed with the seal of the Court, and the Court may seal it accordingly:
- (a) for probate of a will:
- (i) the executor to whom the probate was granted; or

- (ii) a person authorised by that executor, under a power of attorney, to make the application; or
 - (iii) the executor, by representation, of the will;
 - (b) for administration of an estate:
 - (i) the administrator to whom the administration was granted; or
 - (ii) the person authorised by that administrator, under a power of attorney, to make the application;
 - (c) for an order to collect and administer an estate – a Public Trustee in the relevant country to whom the order was granted.
- (3) The Rules may exempt a person from producing the probate, administration or order to the Registrar or depositing a copy of it with the Registrar.
- (4) If an application is made under subsection (2) the Registrar may seal the probate, administration or order in the name and under the seal of the Court and if the Registrar does so the probate, administration or order is taken to have been sealed by the Court.
- (5) However, the Registrar must not seal the probate, administration or order without an order of the Court if:
 - (a) a caveat has been lodged; or
 - (b) it appears to the Registrar to be doubtful whether the probate, administration or order should be sealed.
- (6) If a probate or administration is sealed under subsection (2) or (4):
 - (a) the probate or administration has the same force, effect and operation as if it had been originally granted by the Court; and
 - (b) the applicant under subsection (2) must perform the same duties and be subject to the same liabilities as if the probate or administration had been originally granted by the Court and the applicant was the person to whom the probate or administration had been granted.
- (7) If an order to collect and administer an estate is sealed under subsection (2) or (4), the applicant has the same duties and is subject to the same liabilities as if the applicant was the Public Trustee under the *Public Trustee Act 1979*.

- (8) The Court, may, before or after a probate, administration or order to collect and administer an estate is sealed under subsection (2) or (4), require the applicant to give security for the proper administration of the estate to which it relates.
- (9) In this section, a reference to an order to collect and administer an estate includes a reference to an exemplification of the order.

6 Section 149 replaced

Section 149

repeal, insert

149 Proved wills and other documents to be held by Registrar

Subject to the Rules, an original will that is brought into the Court, probate of which is granted under this Act or a copy of which is annexed to the administration granted under this Act and any other documents as the Court directs, may be deposited and preserved at the office of the Registrar and may be inspected there.

Part 3 Amendment of Electronic Transactions (Northern Territory) Regulations 2001

7 Regulations amended

This Part amends the *Electronic Transactions (Northern Territory) Regulations 2001*.

8 Regulation 5 inserted

After regulation 4

insert

5 Exemptions in relation to rules of court

- (1) Section 8(1)(b) and (2)(b) of the Act do not apply to any requirement or permission to give information in accordance with rules of court.
- (2) Section 9(1)(c) of the Act does not apply to any requirement to give a signature in accordance with rules of court.
- (3) In this regulation:

rules of court includes the rules of the Supreme Court, Local Court and NTCAT.

Part 4 Amendment of Local Court Act 2015**9 Act amended**

This Part amends the *Local Court Act 2015*.

10 Section 26 amended (Court seal)

After section 26(5)

insert

- (6) The seal and stamps may be applied to a document manually or electronically.

11 Section 26A inserted

After section 26, in Part 4, Division 1

insert

26A Court may issue or transmit court documents electronically

- (1) Any order, judgment, process or other document that the Court, a Judge or a registrar may issue or transmit under any law of the Territory may be issued or transmitted by electronic communication.
- (2) If any law of the Territory permits or requires any order, judgment, process or other document to be issued or transmitted by manual means, that requirement is taken to be met if the issuing or transmission occurs by electronic communication.

Example for subsection (2)

If an Act requires or permits the Court to sign or seal a document, the Court could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.

- (3) This section does not limit or affect:
- (a) the Court, a Judge or a registrar from issuing or providing any order, judgment, process or other document manually or in paper form; or
 - (b) any practice, procedure or Rules that provide for electronic processes in the Court; or
 - (c) the power to make Rules; or
 - (d) any other power of the Court, a Judge or a registrar.

Part 5 Amendment of Supreme Court Act 1979**12 Act amended**

This Part amends the *Supreme Court Act 1979*.

13 Section 43 amended (Seal)

(1) Section 43 (1), (2) and (3)

omit (all references)

shall

insert

must

(2) After section 43(3)

insert

(4) The Seal may be applied to a document manually or electronically.

14 Section 44 amended (Stamps)

(1) Section 44(1) and (2)

omit

shall

insert

must

(2) Section 44(3)

omit

all words after "in"

insert

subsection (1):

(a) is as valid and effectual as if it had been sealed with the Seal; and

(b) may be marked with a stamp manually or electronically.

15 Section 45 amended (Judicial notice of Seal)

Section 45

omit

all words from "shall take" to "or impressed"

insert

must take judicial notice of the Seal affixed to, and of the mark of a stamp referred to in section 44(1) on a document or a copy of a document, whether applied manually or electronically, applied

16 Section 70 inserted

Before section 71, in Part V

insert

70 Court may issue or transmit court documents electronically

- (1) Any order, judgment, process or other document that the Court, a Judge, an Associate Judge or a Registrar may issue or transmit under any law of the Territory may be issued or transmitted by electronic communication.
- (2) If any law of the Territory permits or requires any order, judgment, process or other document to be issued or transmitted by manual means, that requirement is taken to be met if the issuing or transmission occurs by electronic communication.

Example for subsection (2)

If an Act requires or permits the Court to sign or seal a document, the Court could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.

- (3) This section does not limit or affect:
 - (a) the Court, a Judge, an Associate Judge or a Registrar from issuing or providing any order, judgment, process or other document manually or in paper form; or
 - (b) any practice, procedure or Rules that provide for electronic processes in the Court; or
 - (c) the power to make Rules; or
 - (d) any other power of the Court, a Judge, an Associate Judge or a Registrar.

17 Section 91 amended (Transitional matters for *Justice Legislation Amendment Act 2019*)

Section 91

omit

1985

insert

1980

Part 6 Repeal of Act

18 Repeal of Act

This Act is repealed on the day after it commences.