

Serial 37

Justice Legislation Amendment (Electronic Documents) Bill 2021

Ms Uibo

A Bill for an Act to amend the *Domestic and Family Violence Act 2007*, the *Local Court Act 2015*, the *Northern Territory Civil and Administrative Tribunal Act 2014*, the *Oaths, Affidavits and Declarations Act 2010*, the *Personal Violence Restraining Orders Act 2016* and the *Supreme Court Act 1979*



NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (ELECTRONIC DOCUMENTS)  
ACT 2021

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Act No. [ ] of 2021

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Act No. [ ] of 2021

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[Assented to [ ] 2021]  
[Introduced [ ] 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Justice Legislation Amendment (Electronic Documents) Act 2021*.

### 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 Domestic and Family Violence Act 2007

### 3 Act amended

This Part amends the *Domestic and Family Violence Act 2007*.

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**4 Section 4 amended (Definitions)**

- (1) Section 4, definition **audiovisual link**

*omit*

- (2) Section 4

*insert*

**audiovisual link** means a facility (including closed-circuit television) that enables audio and visual communication between persons at different places.

**electronic communication**, see section 5 of the *Electronic Transactions (Northern Territory) Act 2000*.

**5 Section 43 amended (What police officer must do after DVO is made)**

- (1) Section 43(1)(b)

*omit, insert*

(b) give a copy of it to the Court.

- (2) After section 43(3)

*insert*

- (3A) For subsection (1)(b), the police officer may give a copy of the DVO to the Court by means of electronic communication.

*Note for subsection (3A)*

*The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of a transaction by means of electronic communications.*

**6 Section 59 amended (Order taken to be summons to appear before Court)**

Section 59, note

*omit, insert*

*Notes for section 59*

- 1 *Part 2.10 deals with the confirmation of DVOs.*
- 2 *Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*



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**7 Section 70 amended (What police officer must do when variation order is made)**

(1) Section 70(2)(b)

*omit, insert*

(b) give a copy of it to the Court.

(2) After section 70(2)

*insert*

(3) For subsection (2)(b), the police officer may give a copy of the DVO to the Court by means of electronic communication.

*Note for subsection (3)*

*The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of transactions by means of electronic communication.*

**8 Section 78 amended (What police officer must do if DVO is confirmed with variations)**

(1) Section 78(2)(b)

*omit, insert*

(b) give a copy of it to the Court.

(2) After section 78(2)

*insert*

(3) For subsection (2)(b), the police officer may give a copy of the DVO to the Court by means of electronic communication.

*Note for subsection (3)*

*The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of transactions by means of electronic communication.*

**9 Section 79 amended (Order taken to be summons to appear before Court)**

Section 79, note

*omit, insert*

*Notes for section 79*

1 Part 2.10 deals with the confirmation of DVOs.

2 Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.

#### **10 Section 104 amended (Definitions)**

Section 104, definition **audiovisual link**

*omit*

#### **11 Section 119 amended (When DVO is given to defendant)**

(1) Section 119(a), after "authority"

*insert*

, whether physically or by audiovisual link,

(2) After section 119(c)

*insert*

(ca) it is given to the defendant by means of electronic communication; or

(3) Section 119, at the end

*insert*

*Note for paragraph (ca)*

*The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of transactions by means of electronic communication.*

#### **12 Part 7.6 inserted**

After section 142

*insert*

### **Part 7.6 Transitional matters for Justice Legislation Amendment (Electronic Documents) Act 2021**

#### **143 Definition**

In this Part:

**commencement** means the commencement of Part 2 of the *Justice Legislation Amendment (Electronic Documents) Act 2021*.

**144 DVO made but not given to parties or Court before commencement**

Section 43, as in force immediately before the commencement, continues to apply in relation to a DVO that was made but had not been given to the parties or the Court before the commencement.

**145 DVO varied but not given to parties or Court before commencement**

Section 70, as in force immediately before the commencement, continues to apply in relation to a DVO that was varied but had not been given to the parties or the Court before the commencement.

**146 DVO confirmed with variations but not given to parties or Court before commencement**

Section 78, as in force immediately before the commencement, continues to apply in relation to a DVO that was confirmed with variations but had not been given to the parties or the Court before the commencement.

**Part 3 Amendment of Local Court Act 2015****13 Act amended**

This Part amends the *Local Court Act 2015*.

**14 Section 29 amended (Access to case files)****(1) Section 29(2), after "person"**

*insert*

, or class of persons,

**(2) Section 29(4)**

*omit*

all words from "is entitled" to "the person"

*insert*

, or class of persons, is entitled to, or is given, **access** to a thing under this section, the person, or class of persons,

---

**15 Section 30 amended (Access to judgments and orders)**

- (1) Section 30(3)  
*omit*  
the person
- (2) Section 30(4)  
*omit, insert*
- (4) The Court may grant access under subsection (3):
- (a) to a person or class of persons; and
  - (b) on any conditions the Court thinks fit.

**16 Section 31 amended (Access to exhibits)**

- (1) Section 31(2), after "to proceedings"  
*insert*  
, or class of persons who are not parties to proceedings,
- (2) Section 31(4)  
*omit*  
all words from "is entitled" to "the person"  
*insert*  
, or class of persons, is entitled to, or is given, **access** to an exhibit under this section, the person, or class of persons,

**17 Sections 31A and 31B inserted**

After section 31

*insert*

**31A Access to any other Court records**

- (1) This section applies in relation to any document, information, recording or thing that is a Court record or part of a Court record and is not part of a case file, judgment, order or exhibit.
- (2) The Court may, on application, grant access to the document, information, recording or thing to a person or class of persons.

- (3) The Court may grant the access on any conditions the Court thinks fit.

**31B Access to persons other than parties**

- (1) This section applies in relation to an application to the Court for access under section 29(2), 30(3), 31(2) or 31A(2).
- (2) Without limiting the sections mentioned in subsection (1), the Court may grant access:
- (a) to a person or class of persons representing an Agency who requires access for the purpose of carrying out the functions of the Agency; or
  - (b) to a person who requires access to case files, judgments, orders, exhibits or other Court records for multiple proceedings in the Court; or
  - (c) to a person who requires regular access to a case file, judgment, order, exhibit or other Court records for a specified proceeding in the Court.

**18 Section 33 amended (Principal registrar to provide copies)**

Section 33(1)

*omit*

sections 29 to 31

*insert*

section 29, 30, 31 or 31A

**Part 4 Amendment of Northern Territory Civil and Administrative Tribunal Act 2014**

**19 Act amended**

This Part amends the *Northern Territory Civil and Administrative Tribunal Act 2014*.

**20 Section 85 amended (Accessibility of evidence)**

- (1) Section 85(1)

*omit*

, allow the person

*insert*

or a class of persons, allow the person or class of persons

- (2) Section 85(2), after "person"

*insert*

or class of persons

- (3) After section 85(3)

*insert*

- (3A) Without limiting subsection (1) or (2), the Tribunal may allow or permit a person or class of persons to inspect or obtain copies of the material mentioned in subsection (1) or (2):

- (a) to a person or class of persons representing an Agency who requires access to the material for the purpose of carrying out the functions of the Agency; or
- (b) to a person who requires access to the material for multiple proceedings in the Tribunal; or
- (c) to a person who requires regular access to the material for a specified proceeding in the Tribunal.

## **Part 5                      Amendment of Oaths, Affidavits and Declarations Act 2010**

### **21                      Act amended**

This Part amends the *Oaths, Affidavits and Declarations Act 2010*.

### **22                      Section 3 amended (Definitions)**

Section 3

*insert*

**audiovisual link** means a facility (including closed-circuit television) that enables audio and visual communication between persons at different places.

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**23 Section 9 replaced**

Section 9

*repeal, insert*

**9 How oath to be administered in other cases**

- (1) 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.
- (2) For subsection (1), person A may take an oath in the physical presence of person B or by audiovisual link with person B.

*Note for section 9*

*If person A is unable to say the words aloud, the oath may be administered in a different way under section 11.*

**24 Section 11 amended (Alternative form and administration of oath)**

Section 11

*omit*

sections 5 and 8 to 10

*insert*

any requirement under this Act to take or administer an oath in a certain manner

**25 Section 14 amended (How affidavits to be made)**

- (1) Section 14(3)(a), after "presence"

*insert*

, whether physically or by audiovisual link,

- (2) Section 14(5)(d)

*omit*

authorised witness, say orally

*insert*

authorised witness, whether physically or by audiovisual link, state

(3) Section 14(5)(d)(i)

*omit*

he or she

*insert*

the person

(4) Section 14(5)(d)(iii)

*omit*

his or hers

*insert*

the person's

(5) Section 14(6)(a)(ii)

*omit*

his or her

*insert*

the authorised witness's

(6) After section 14(6)

*insert*

(6A) If a person makes an oath under subsection (5)(d) by audiovisual link:

(a) the authorised witness may use a scanned or electronic copy of the affidavit for the purposes of complying with the requirements of subsection (6); and

(b) the person's affidavit must, in addition to any other requirement for making an affidavit, include a statement:

(i) specifying the manner of the making of the oath; and



- (ii) whether a scanned or electronic copy of the affidavit was used in accordance with paragraph (a).

**26 Section 14A inserted**

After section 14

*insert*

**14A Electronic signatures and initials**

A requirement under this Part for a person making an affidavit or an authorised witness to sign or initial an affidavit or an attachment to the affidavit is satisfied if the person or the authorised witness signs or initials the affidavit or attachment by electronic means.

**27 Section 19 amended (Written statutory declaration)**

- (1) Section 19(4), after "presence"

*insert*

(whether physically or by audiovisual link)

- (2) Section 19(5)(a)(ii)

*omit*

his or her

*insert*

the witness's

- (3) After section 19(5)

*insert*

- (6) If a person is making a statutory declaration by audiovisual link:
- (a) the witness may use a scanned or electronic copy of the declaration for the purposes of complying with subsection (5); and
  - (b) the declaration must, in addition to any other requirement for a declaration, include a statement:
    - (i) specifying the manner of the making of the declaration; and

- (ii) whether a scanned or electronic copy of the declaration was used in accordance with paragraph (a).

**28 Section 20 amended (Recorded statutory declaration)**

- (1) Section 20(1)

*omit*

audio-visual

*insert*

audiovisual

- (2) Section 20(4), after "presence"

*insert*

, whether physically or by audiovisual link,

- (3) Section 20(5)(a)

*omit*

his or her

*insert*

the witness's

- (4) Section 20(5)(b)

*omit*

he or she

*insert*

the witness

**29 Section 21A inserted**

After section 21

*insert*

**21A Electronic signatures and initials**

A requirement under this Part for a person making a statutory declaration or unattested declaration or a witness to sign or initial a statutory declaration or an attachment to a statutory declaration is

satisfied if the person or the witness signs or initials the statutory declaration (including any attachment) or the unattested declaration by electronic means.

**30 Section 22 amended (Other Acts may provide for how declaration to be made)**

Section 22

*omit*

Sections 18 to 21

*insert*

Sections 18, 19, 20, 21 and 21A

**31 Section 24 amended (Powers of commissioner for oaths)**

(1) Section 24(2)(b)

*omit*

his or her

*insert*

the commissioner's

(2) After section 24(2)

*insert*

(3) If a commissioner for oaths is attesting the execution of a document by audiovisual link, the commissioner may use a scanned or electronic copy of the document for the purposes of complying with the requirements of subsection (2).

(4) A requirement under subsection (2) for a commissioner for oaths to sign a document is satisfied if the commissioner signs the document by electronic means.

**32 Section 25 amended (Counter-signing other document or notarial act done out of Territory)**

(1) After section 25(1)

*insert*

(1A) A person may counter-sign a document by audiovisual link or other electronic means.

- (2) Section 25(2), after "witness"  
*insert*  
, in person or by audiovisual link,

**33 Section 28A inserted**

After section 28

*insert*

**28A Witnessing by audiovisual link**

- (1) A requirement under this Act for the presence of a witness may be met by the witness being present by audiovisual link.
- (2) If a witness is present by audiovisual link, the following requirements must be met:
- (a) if a person is required to sign a document in the presence of a witness:
- (i) the witness sees the person sign the document; and
- (ii) the witness must be reasonably satisfied that the document the witness signs is the same document or a copy of the document that the person signed;
- (b) if a person is required to take an oath – the witness is able to hear the oath being taken by the person.

*Note for subsection (2)(b)*

*If the person is unable to say the oath aloud, the oath may be administered in a different way under section 11.*

- (3) In this section:
- witness** includes the following:
- (a) an authorised witness;
- (b) an adult witness;
- (c) a commissioner for oaths;
- (d) a justice of the peace.

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## Part 6                      Amendment of Personal Violence Restraining Orders Act 2016

### 34            Act amended

This Part amends the *Personal Violence Restraining Orders Act 2016*.

### 35            Section 18 amended (Notice of order)

- (1)            Section 18, before "As"

*insert*

- (1)

- (2)            Section 18, at the end

*insert*

- (2) A copy of the personal violence restraining order or the interim personal violence restraining order is given to the defendant if:
- (a) the defendant was before the Court, whether physically or by audiovisual link, when the order was made; or
  - (b) the order is served on the defendant in a way mentioned in section 25 of the *Interpretation Act 1978*; or
  - (c) the order is given to the defendant by means of electronic communication; or
  - (d) the order is given to the defendant in another way ordered by the Court.

*Note for subsection (2)(c)*

*The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of transactions by means of electronic communication.*

- (3) In this section:

**audiovisual link** means a facility (including closed-circuit television) that enables audio and visual communication between persons at different places.

**electronic communication**, see section 5 of the *Electronic Transactions (Northern Territory) Act 2000*.

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**36 Section 19 amended (Interim personal violence restraining order)**

Section 19(3), at the end

*Note for subsection (3)(c)*

*An interim personal violence restraining order is given to the defendant if it is given in any of the ways mentioned in section 18.*

**37 Section 23 amended (Contravention of personal violence restraining order or interim personal violence restraining order)**

Section 23(2), at the end

*insert*

*Note for subsection (2)*

*Under section 18, a copy of the personal violence restraining order or interim personal violence restraining order is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of the order is given to the defendant if it is given in any of the ways mentioned in that section.*

**38 Part 4 inserted**

After section 24

*insert*

**Part 4 Transitional matters for Justice Legislation Amendment (Electronic Documents) Act 2021****25 Order made but not given to defendant before commencement**

- (1) Section 18, as in force immediately before the commencement, continues to apply in relation to a personal violence restraining order or an interim personal violence restraining order that was made before the commencement but had not been given to the defendant before the commencement.

- (2) In this section:

**commencement** means the commencement of Part 6 of the *Justice Legislation Amendment (Electronic Documents) Act 2021*.

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## **Part 7                   Amendment of Supreme Court Act 1979**

### **39           Act amended**

This Part amends the *Supreme Court Act 1979*.

### **40           Section 85A inserted**

After section 85

*insert*

#### **85A       Access to records of Court**

- (1) The Court may, on application, grant access to specified records of the Court in relation to proceedings in the Court to a person or class of persons.
- (2) The Court may grant the access under subsection (1) on any terms it considers appropriate.
- (3) Without limiting subsection (1), the Court may grant access:
  - (a) to a person or class of persons representing an Agency who requires access for the purpose of carrying out the functions of the Agency; or
  - (b) to a person who requires access to the records for multiple proceedings in the Court; or
  - (c) to a person who requires regular access to the records for a specified proceeding in the Court.

## **Part 8                   Repeal of Act**

### **41           Repeal of Act**

This Act is repealed on the day after it commences.