

NORTHERN TERRITORY OF AUSTRALIA

EVIDENCE (NATIONAL UNIFORM LEGISLATION) REGULATIONS

Subordinate Legislation No. 46 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 46 of 2012*

Evidence (National Uniform Legislation) Regulations

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Evidence (National Uniform Legislation) Act*.

Dated 14 December 2012

S. G. THOMAS
Administrator

By Her Honour's Command

J. W. ELFERINK
Attorney-General and Minister for Justice

* Notified in the *Northern Territory Government Gazette* on 14 December 2012.

1 Citation

These Regulations may be cited as the *Evidence (National Uniform Legislation) Regulations*.

2 Commencement

These Regulations commence on the commencement of section 197 of the *Evidence (National Uniform Legislation) Act*.

3 Definitions

In these Regulations:

address includes a private, business or official address.

notifying party, in relation to a notice, means the person giving the notice.

4 Exceptions to hearsay rule – notice of intention to adduce evidence of previous representations

(1) For the purposes of section 67(1) of the Act, a notice given under that section (a **notice of previous representation**) must state:

(a) the substance of evidence of a previous representation that the notifying party intends to adduce; and

(b) the substance of all other relevant representations made by the person who made that previous representation, so far as they are known to the notifying party; and

(c) particulars of:

(i) the date, time and place at, and the circumstances in which, each of the representations mentioned in paragraph (a) or (b) was made; and

(ii) the names of the persons by whom, and the persons to whom, each of those representations was made; and

(iii) in a civil proceeding, the address of each person named under subparagraph (ii), so far as it is known to the notifying party.

(2) If a notifying party intends to rely on:

(a) section 63(2)(a) or (b) of the Act; or

(b) section 65(2)(a), (b), (c) or (d) of the Act; or

(c) section 65(3)(a) or (b) of the Act; or

(d) section 65(8)(a) or (b) of the Act;

the party's notice of previous representation must state particulars of the facts on the basis of which it is alleged that the person who made a representation referred to in the notice is not available to testify concerning the fact to be proved by adducing evidence of that representation.

- (3) If a notifying party intends to rely on section 64(2)(a) or (b) of the Act, the party's notice of previous representation must state particulars of the facts that the party will rely on to establish the grounds specified in section 64(2) of the Act.
- (4) If a notice of previous representation refers to a previous representation that is in writing:
- (a) a copy of the document, or of the relevant portion of the document, containing the representation must be attached to the notice; and
 - (b) the notice must identify the document unless the identity of the document is apparent on the face of the copy attached to the notice.
- (5) If a copy of a document, or of a portion of a document, is attached to a notice of previous representation, it is a sufficient compliance for the purposes of subregulation (1)(a) to specify in the notice, or in the copy of a document or portion of a document attached to the notice, the representation evidence of which the notifying party intends to adduce.

5 Address of person named in notice under regulation 4 – criminal proceedings

- (1) On the application of a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of any person named in a notice given under regulation 4 by whom, or to whom, a representation referred to in the notice was made if the court is satisfied that:
- (a) the address is relevant to the offence charged; and
 - (b) one of the following applies:
 - (i) disclosure is not likely to present a reasonably ascertainable risk to the welfare or physical safety of any person;

-
- (ii) the interests of justice outweigh any risk referred to in subparagraph (i).
- (2) A direction given under subregulation (1) may be given on such terms as the court thinks fit.

6 Tendency rule and coincidence rule – form of notices

- (1) For the purposes of section 99 of the Act, a notice given under section 97(1)(a) of the Act (relating to the tendency rule) must state:
- (a) the substance of the evidence that the notifying party intends to adduce; and
 - (b) if that evidence consists of, or includes, evidence of the conduct of a person, particulars of:
 - (i) the date, time and place at, and the circumstances in which, the conduct occurred; and
 - (ii) the name of each person who saw, heard or otherwise perceived the conduct; and
 - (iii) in a civil proceeding, the address of each person named under subparagraph (ii), so far as it is known to the notifying party.
- (2) For the purposes of section 99 of the Act, a notice given under section 98(1)(a) (relating to the coincidence rule) must state:
- (a) the substance of the evidence of the occurrence of two or more events that the notifying party intends to adduce; and
 - (b) particulars of:
 - (i) the date, time and place at, and the circumstances in which, each of those events occurred; and
 - (ii) the name of each person who saw, heard or otherwise perceived each of those events; and
 - (iii) in a civil proceeding, the address of each person named under subparagraph (ii), so far as it is known to the notifying party.

7 Address of person named in notice under regulation 6 – criminal proceedings

- (1) On the application of a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of any person named in a notice given under regulation 6 who saw, heard or otherwise perceived conduct or events referred to in the notice if the court is satisfied that:
- (a) the address is relevant to the offence charged; and
 - (b) one of the following applies:
 - (i) disclosure is not likely to present a reasonably ascertainable risk to the welfare or physical safety of any person; or
 - (ii) the interests of justice outweigh any risk referred to in subparagraph (i).
- (2) A direction given under subregulation (1) may be given on such terms as the court thinks fit.

8 Forms

The forms in the Schedule are prescribed for the purposes of the provisions of the Act specified in the forms.

Schedule Forms

regulation 8

FORM 1

[heading as in originating process]

**CERTIFICATE UNDER SECTION 128¹/128A¹ OF EVIDENCE (NATIONAL
UNIFORM LEGISLATION) ACT**

This Court certifies under section 128¹/128A¹ of the *Evidence (National Uniform Legislation) Act* that evidence in these proceedings by [name of witness] on [date or dates], a record of which is attached to this certificate, is evidence¹/information¹ to which section 128(7)¹/128A(8)¹ of that Act applies.

Date: _____

Signature of Judge¹/magistrate¹

Note

¹Section 128(7) of the *Evidence (National Uniform Legislation) Act* reads as follows:

- (7) In any proceeding in a Territory court or before any person or body authorised by a law of the Territory, or by consent of parties, to hear, receive and examine evidence:
- (a) evidence given by a person in respect of which a certificate under this section has been given; and
 - (b) any information, document or thing obtained as a direct or indirect consequence of the person having given evidence;
- cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

¹Section 128A(8) of the *Evidence (National Uniform Legislation) Act* reads as follows:

- (8) In any proceeding in a Territory court:
- (a) evidence of information disclosed by a relevant person in respect of which a certificate has been given under this section; and
 - (b) evidence of any information, document or thing obtained as a direct result or indirect consequence of the relevant person having disclosed that information;
- cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence concerned.

Notes for completing form

1 Delete as appropriate.

2 A transcript, or other record, of the evidence is to be attached to this certificate, and duly authenticated by the court or its proper officer.

FORM 2

[heading as in originating process]

AFFIDAVIT OF MEMBER OF STATE OR TERRITORY POLICE FORCE
CONCERNING FINGERPRINTS UNDER SECTION 179 OF *EVIDENCE*
(*NATIONAL UNIFORM LEGISLATION*) ACT

I, *[name]* of *[address]*, a member of the police force of *[State or Territory]*
make oath and say¹/do solemnly and sincerely affirm²:

1. I am a fingerprint expert for the police force of *[State or Territory]*.
2. I have examined the fingerprint card marked for identification with the letter "A".
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the police force of *[State or Territory]* showing the fingerprints of *[name of person and any alias]*.
4. The fingerprints on those cards are identical.
5. According to the records of the police force of *[State or Territory]*, which I believe to be accurate, *[name of person]* was convicted in that *[State or Territory]* of the following offence(s) – *[state offence(s)]*.
6. Annexed to this affidavit and marked with the letters *[insert an alphabetical sequence of letters, commencing at "B", corresponding to the number of annexures]*, are certified copies or certificates of conviction for each of those convictions.
7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in paragraph 3 of this affidavit.

Made¹/Sworn²/affirmed² at *[place]* _____ on *[date]* _____

By *[signature of deponent]* _____

Witnessed by

Signature

Justice of the peace³/commissioner for oaths³

Name

Address or phone no. _____

Notes for completing form

- 1 *This phrase must be used if the affidavit is made in the Northern Territory and may be used if the affidavit is sworn outside of the Northern Territory.*
- 2 *This phrase must not be used if the affidavit is made in the Northern Territory.*
- 3 *Delete as appropriate for affidavits made in the Northern Territory or insert the title of the proper officer if the affidavit is made outside the Northern Territory.*
- 4 *An affidavit made in the Northern Territory must comply with the Oaths, Affidavits and Statutory Declarations Act.*

FORM 3

[heading as in originating process]

AFFIDAVIT OF MEMBER OF AUSTRALIAN FEDERAL POLICE
CONCERNING FINGERPRINTS UNDER SECTION 180 OF *EVIDENCE*
(*NATIONAL UNIFORM LEGISLATION*) ACT

I, *[name of deponent]* of *[address of deponent]*, a member¹/special member¹/staff member¹ of the Australian Federal Police, make oath and say²/do solemnly and sincerely affirm³:

1. I am a fingerprint expert for the Australian Federal Police.
2. I have examined the fingerprint card marked for identification with the letter "A".
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the Australian Federal Police showing the fingerprints of *[name of person and alias, if any]*.
4. The fingerprints on those cards are identical.
5. According to the records of the Australian Federal Police, which I believe to be accurate, *[name of person]* was convicted of the following offence(s) against a law of the Commonwealth: *[state offence(s)]*.
6. Annexed to this affidavit and marked with the letters *[insert an alphabetical sequence of letters, commencing at "B", corresponding to the number of annexures]*, are certified copies or certificates of conviction for each of those convictions.
7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in paragraph 3 of this affidavit.

Made²/Sworn³/affirmed³ at *[place]* _____ on *[date]* _____

By *[signature of deponent]* _____

Witnessed by

Signature _____

Justice of the peace⁴/commissioner for oaths⁴

Name _____

Address or phone no. _____

Notes for completing form

- 1 *Delete as appropriate.*
- 2 *This phrase must be used if the affidavit is made in the Northern Territory and may be used if the affidavit is sworn outside of the Northern Territory.*
- 3 *This phrase must not be used if the affidavit is made in the Northern Territory.*
- 4 *Delete as appropriate for affidavits made in the Northern Territory or insert the title of the proper officer if the affidavit is made outside the Northern Territory.*
- 5 *An affidavit made in the Northern Territory must comply with the Oaths, Affidavits and Statutory Declarations Act.*

FORM 4

CERTIFICATE OF CONVICTIONS, ACQUITTALS AND OTHER JUDICIAL
PROCEEDINGS UNDER SECTION 178 OF EVIDENCE (NATIONAL
UNIFORM LEGISLATION) ACT

I, [name], being a [title of office¹] of the [applicable court²] certify that,
according to the records of the Court,

³ on [date] at [venue of Court] [name of person] was
convicted/acquitted/sentenced⁴ of [particulars of conviction/
acquittal/sentence] .

³ on [date] [name of person] is/was⁴ a party to the following proceeding
before the Court – [particulars of proceeding, including names of parties
and nature of proceeding] .

³ on [date] at [venue of Court] in [proceedings⁵] between [name of
parties] the following order was made by the Court – [terms of order] .

Date: _____

Signature of [title of office¹]

Notes for completing form

- 1 Insert "Judge", "Magistrate", "Registrar" or title of other proper officer.
- 2 Insert name of applicable court and jurisdiction (if outside the Northern Territory).
- 3 Delete paragraphs as appropriate.
- 4 Delete as appropriate.
- 5 Set out the nature of the proceedings.