

# NORTHERN TERRITORY

## Justice of the Peace

### Handbook



March 2017

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# 1. Introduction

This handbook has been prepared by the Department of the Attorney-General and Justice to provide guidelines about the appointment and functions of a Justice of the Peace in the Northern Territory. Throughout this handbook, a Justice of the Peace can be referred to as a JP.

The Office of Justice of the Peace has a long history and is a well respected and honorable office. This handbook is designed to assist in maintaining the high standards which are associated with the title and role of JP.

JPs are required to act fairly and impartially at all times and should be careful to avoid the appearance of bias. The appointment is an honorary one and you are not permitted to demand or receive fees or donations, directly or indirectly, for the performance of any duties. Involvement in improper practices, conviction for any serious offence or bankruptcy will result in the termination of your appointment.

It is essential that you understand the legal significance of the duties you perform as a JP. You should read this handbook before exercising any of the powers of your office and familiarise yourself with the relevant legislation.

The administrative responsibility for the Office of Justice of the Peace lies with the Department of the Attorney-General and Justice.

## 1.1 How to use this Handbook

The content of this Handbook has been developed in accordance with the requirements under the *Justices of the Peace Act* (referred to in this handbook as the Act) and the *Oaths, Affidavits and Declarations Act*. Copies of these Acts may be found at Appendices B and C to this handbook.

Functions of a JP sometimes involve the issuing of warrants or summons and information on the relevant legislation, including examples from the *Police Administration Act* are also provided.

**Please address any queries to:**

**The Department of the Attorney-General and Justice located at:**

Ground Floor  
Old Admiralty Towers  
68 The Esplanade  
DARWIN NT 0800

Postal: GPO Box 1722, DARWIN NT 801

Telephone: (08) 8999 1809

Email: [statutoryappointmentsoffice@nt.gov.au](mailto:statutoryappointmentsoffice@nt.gov.au)

Web address: <https://nt.gov.au/law/processes/justice-of-the-peace-and-commissioner-for-oaths/introduction>

Handbook Date: March 2017

Support and assistance may also be available at the Justices Association of the NT.

Contact details of the Registrar: Joe DeLuca 0414 682 206

NT Justices Association  
PO Box 523  
KARAMA NT 0813

## 1.2 Definitions

Standard terms not contained in this section are to be given the ordinary dictionary meaning.

**Adjuration** - The action of adjuring, that is, putting on oath.

**Affidavit** – The written statement that is sworn on oath and made before a person who is authorised to take an oath.

**Affirmation** – **This term is** no longer used in the Northern Territory. If a person chooses not to take the religious oath when making an affidavit, that person may take an oath by promising to tell the truth.

**Attest** - To bear witness to, affirm the truth of, to testify or to certify. A person who signs his or her name as witness to the signing of a document or affidavit is said to attest it.

**Code of Conduct** - The Code provides clear directions on acceptable standards of conduct for all Justices of the Peace. It also clarifies the standards of behaviour for any Justices of the Peace who may be uncertain of their obligations and will also be useful for members of the public who may be unsure of what to expect when seeking the services of a Justices of the Peace.

**Commissioner for Oaths** - Pursuant to section 23 of the *Oaths, Affidavits and Declarations Act*, the following persons are Commissioners for Oaths:

- a member of the Legislative Assembly;
- a member of either house of the Parliament of the Commonwealth elected to represent the Territory or a constituency in the Territory;
- a legal practitioner;
- a member of the Police Force of the NT; and
- a person appointed by the Minister for Justice and the Attorney-General to be a commissioner for oaths.

**Declarant** - One who makes a declaration.

**Deponent** – A person who makes an affidavit or deposition.

**Jurat** – A clause at the end of the affidavit which contains the time and place of execution and signature of deponent and witness.

**Instrument** - Legal document such as a will, a mortgage or a general power of attorney.

**Justice of the Peace** - Pursuant to sections 5 and 6 and Schedule 1 of the *Justices of the Peace Act*, the following persons are justices of the peace:

- Judge, Master or Registrar of the Supreme Court;
- Local Court Judge;
- Registrar of the Local Court;
- Judicial Registrar or Registrar of the Family Court of Australia;
- Mayor of a municipality; or
- a person appointed or reappointed by the Administrator to the office of justice of the peace in and for the Northern Territory.

**Legal Practitioner** - means an Australian legal practitioner as defined in section 6(a) of the *Legal Profession Act* (ie a lawyer who has a practising certificate)

**Oath** - An oath, for the purposes of a law in force in the Territory, must be one of the following, according to the person's preference:

- I promise ... [content of oath] ; or
- I swear by Almighty God [*or a deity recognised by the person's religion*] ... [content of oath] ... So help me God! [*or as appropriate*]

**Public Notary** - A Public Notary is a legal practitioner appointed as such pursuant to the *Public Notaries Act*. A Public Notary has statutory powers to witness documents, administer oaths, and perform other administrative functions of a national and international nature. Information about locating a Public Notary is available on the [http://www.supremecourt.nt.gov.au/documents/List of Public Notaries.pdf](http://www.supremecourt.nt.gov.au/documents/List_of_Public_Notaries.pdf)

**Statutory declaration** - A statutory declaration is a written statement that allows a person to declare something to be true. It must be in the form required by section 18 of the *Oaths, Affidavits and Declarations Act* and must be witnessed by any person who has attained the age of 18 years (see section 19(4) of the *Oaths, Affidavits and Declarations Act*). A JP is not needed to witness a statutory declaration, however, may do so.

**Unattested declaration** - An unattested declaration is a written statement that allows a person to declare something to be true. It must be in the form required by section 18 of the *Oaths, Affidavits and Declarations Act* and but does not need to be witnessed by another person (see note to section 21 of the *Oaths, Affidavits and Declarations Act*).

## 1.3 Historical Background

The Office of Justice of the Peace was established by English statute in the 14<sup>th</sup> century. The men appointed to the position were given wide ranging powers in the day to day administration of the community.

Gradually JPs were given wider judicial authority and were able to hear and determine offences, take declarations of parties to a marriage, receive information about indictable offences and administer licences. They also dealt with the regulation and maintenance of bridges and roads and the building and control of prisons.

The office of Justice of the Peace was imported from England to New South Wales, where Governor Phillip was appointed a JP and given power to make other appointments. With increasing population and complexity of laws came the development of the positions of paid magistracies with judicial and ministerial responsibilities in local courts and courts of summary jurisdiction.

The office of Justice of the Peace continued as an honorary role. Although the duties of today's JPs are largely administrative.

JPs in the Northern Territory are no longer required by the Local Court Chief Judge to perform previous functions which included sitting on traffic matters in the Local Court or exercising other judicial functions in the Local Court. Previous functions under the *Bail Act* are no longer required by the NT Police.



## 1.4 Legislation

Below is a list of legislation relevant to the Office of Justice of the Peace.

### A

Adoption of Children Regulations  
Agents Licensing Regulations  
*Animal Welfare Act*

### B

Bail Regulations  
*Building Act*

### C

Care and Protection of Children (Screening) Regulations  
*Cemeteries Act*  
*Co-operatives Act*  
*Consumer Affairs and Fair Trading Act*  
Consumer Affairs & Fair Trading (Pawnbrokers & Second Hand Dealer) Regulations  
*Court Security Act*  
*Criminal Code Act*  
*Criminal Property Forfeiture Act*  
Criminal Property Forfeiture Regulations  
*Criminal Records (Spent Convictions) Act*  
Crimes (Victims Assistance) Rules

### F

*Fines and Penalties (Recovery) Act*  
Fines and Penalties (Recovery) Regulations  
*Fuel Subsidies Act*

### G

*Gaming Machine Act*  
*Guardianship of Infants Act*

### H

*Health Practitioners Act*  
*Health and Community Services Complaints Act*  
Health and Community Services Complaints Regulations

### I

*Interpretation Act*

### J

*Justices Act (Now called Local Court (Criminal Procedure) Act*  
*Justices of the Peace Act*  
Justices Regulations (Now called Local Court Criminal Procedure) Regulations)

### L

Local Court Act  
Local Court (Criminal Procedure) Act (formerly the Justices Act)  
Local Court (Criminal Procedure) Regulations  
Local Court Rules  
*Local Government Act*

### M

*Marine Pollution Act*  
*Misuse of Drugs Act* and Regulations

### O

*Oaths, Affidavits and Declarations Act*  
*Ombudsman Act*

### P

*Planning Act*  
*Police Administration Act*  
*Prisoners (Interstate Transfer) Act*  
Prisoners (Interstate Transfer) Regulations  
Public Health (Nuisance Prevention) Regulations

### R

*Rail Safety Act*  
*Records of Depositions Act*

### S

*Sentencing Act*  
*Sheriff Act*  
*Summary Offences Act*  
*Supreme Court Act*  
*Supreme Court Rules*  
*Swimming Pool Safety Act*

### T

*Territory Parks and Wildlife Conservation Act*, Section 95  
*Totalisator Licensing and Regulation Act*

### W

*Waste Management and Pollution Control Act*  
Work Health Court Rules

### Y

*Youth Justice Act*  
Youth Justice Regulations

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Copies of the above Acts and Regulations can be obtained from the Northern Territory Legislation Database:  
[http://dcm.nt.gov.au/strong\\_service\\_delivery/suporting\\_government/current\\_northern\\_territory\\_legislation\\_database](http://dcm.nt.gov.au/strong_service_delivery/suporting_government/current_northern_territory_legislation_database)



## 2. Appointments

### 2.1 General

To be eligible for appointment applicants must:

- be a resident of the Northern Territory for at least 12 months;
- intend to remain in the Northern Territory for up to five years;
- be enrolled on the Northern Territory Electoral Roll at their current address;
- be of good character and be able to provide three referee reports;
- be able to demonstrate a substantial and continual need in their locality for appointment of a JP;
- demonstrate knowledge of the role of a JP;
- undertake a Criminal History Check conducted by Screening Assessment for Employment Northern Territory (SAFENT), a division of the Northern Territory Police.
- consent to confidential enquiries being made to determine suitability for appointment;
- consent to their name and contact details being published on the Internet;
- undertake an interview conducted by officers from the Department of the Attorney-General and Justice or the Northern Territory Police; and
- consent to their name and contact details being published on the Internet.

### 2.2 Ex-officio JPs

The Act provides that a person who holds or acts in any of the following positions (also known as ex-officio) is, by virtue of acting in or holding that position, a JP:

- Judge of the Supreme Court;
- Master of the Supreme Court;
- Registrar of the Supreme Court;
- Local Court Judge ;
- Registrar of the Local Court;
- Judicial Registrar or Registrar of the Family Court of Australia; or
- Mayor of a municipality.

The person ceases to be a JP when he or she ceases to hold or act in that position.

## 2.3 Applying to be a JP

A JP application pack is available on request and applicants can contact the Statutory Appointments Officer by telephone (08) 8999 1809 or via email address: [statutoryappointmentsoffice@nt.gov.au](mailto:statutoryappointmentsoffice@nt.gov.au).

You will be contacted by an officer from the Department of the Attorney-General and Justice to discuss your application, and whether there is a substantial and continual need for appointment of a JP in your locality.

Once you have received your JP application pack you must fully complete and return all of the following original documents:

- your completed original application form;
- signed photographic identification - eg: both sides of your driver's licence displaying your signature, or passport;
- three original referee reports from respected citizens within the community in your locality; and
- a completed original Criminal History Check Application form and 100 point identity documents.

You are then required to send these documents by post to:

Clerk of the Peace  
Department of the Attorney-General and Justice  
GPO Box 1722  
DARWIN NT 0801

**Please Note: Not all applications for appointment as a Justice of the Peace are ultimately approved.**

## 2.4 Incomplete applications

You may be contacted or your application returned if it is incomplete.

This includes if you:

- have not provided original documents;
- have not answered all the questions on the forms;
- have not provided evidence of change of name and/or proof of use of change of name;
- have not provided signed photographic identification - eg: both sides of your driver's licence displaying your signature, or passport;
- are married but have not provided a maiden name;
- have not provided a completed Criminal History Check Application form and/or the certified photographic identity documents used to validate the 100 points of identity.
- have not provided original copies of for the three referee reports;
- have not signed and/or had witnessed the statutory declaration page of the application; and/or

- are not enrolled on the Northern Territory Electoral Roll at your current address.

## 2.5 Application to renew a JP Appointment

Appointments are generally for a period of five years, although they may be for shorter periods according to the need for the appointment. Renewal of your appointment as a JP is not automatic.

The Statutory Appointments Officer will send a letter and a JP renewal application form six months prior to the expiry of the appointment date.

You will need to provide a copy of a signed photographic identification document- eg: both sides of your driver's licence displaying your signature, or passport;

The identity document does not need to be certified.

## 2.6 Termination of a JP Appointment

You will no longer be a JP if any of the following apply:

- the Administrator of the Northern Territory terminates your appointment. This can occur as an exercise of the Administrator's discretion. No reasons have to be provided by or on behalf of the Administrator;
- the appointment was subject to a condition that isn't fulfilled;
- your appointment period expires; or
- you resign in writing by post or email to the Clerk of the Peace.

# 3. Obligations of Justices of the Peace

A Justice of the Peace has a duty of care in relation to documents witnessed or certified. This is a legal obligation to follow correct procedure when acting as a Justice of the Peace in order to avoid actions that cause harm to another person. For example, if a person suffers financial loss because a Justice of the Peace did not follow the correct procedure for witnessing the signing of a document, the person may have cause to take legal action against the Justice of the Peace.

## 3.1 Comply with the Code of Conduct

The Code of Conduct provides clear directions on acceptable standards of conduct for all Justices of the Peace. It also clarifies the standards of behaviour for any Justices of the Peace who may be uncertain of their obligations and will also be useful for members of the public who may be unsure of what to expect when seeking the services of a Justices of the Peace.

Failure to comply with the Code may result in a review of the Justice of the Peace's good character or whether there has been a failure to properly carry out the duties of office.

A copy of the Code of Conduct is at **ATTACHMENT A** of this Handbook.

## 3.2 Keeping of Written Records

A JP may decide to keep a record of the services they provide through the use of a note book or a diary to record the date, time, and the type of document or service provided (the personal details of the person requiring the service must not be recorded).

The Department of the Attorney-General and Justice does not require a JP to keep a record of services provided or for a JP to provide a sample of the services provided when they are applying for re-appointment.

## 3.3 Conflict of interest

The Code of Conduct requires that a Justice of the Peace must remain independent and impartial when providing Justice of the Peace services refer to Item 2(3) of the Code of Conduct. JP's need to be familiar with the Code of Conduct. . A JP must avoid any situation which may give rise to the suggestion that a personal interest has conflicted with the JPs functions and duties.

The Code of Conduct requires that if a Justice of the Peace has a personal, family, financial or business interest in a matter before them, the Justice of the Peace must disclose the interest to the person seeking Justice of the Peace services or decline to provide Justice of the Peace services in that matter.

Conflicts of interest can be actual, perceived or potential:

- **actual** - involves a direct conflict between your duties and responsibilities and your existing private interests;
- **perceived** - conflict exists where it could be perceived or appears that private interests could improperly influence the performance of your duties – whether or not this is in fact the case;
- **potential** - arises where your private interests could conflict with your official duties; and
- **financial or personal** - a conflict of interest can arise from avoiding personal losses or gaining personal advantage, financial or otherwise.

## 3.4 Confidentiality

The high public esteem in which the position of JP is held requires that those holding the position should have the confidence of the people of the Northern Territory.

Item 5(2) of the Code of Conduct states that a JP “must keep safe and must not reveal information which is private, confidential or commercially-sensitive and which the Justice of the Peace has obtained when providing Justice of the Peace services, unless authorised by law.”

A JP must not divulge or misuse confidential information obtained in carrying out his or her duties unless required to by law. JP's in the course of their duties will be exposed to a range of private, personal, confidential and commercially sensitive information. In some cases this information will be related to NT Police investigations and Court proceedings.

JPs must refrain from making comment or opinion regarding the matters that come before them. This includes divulging information to family and friends; commenting on social media and the press. By keeping confidence you are ensuring that JPs can effectively carry out their duties without fear or favour.

Where you have concerns over confidentiality and your obligations under the law or the JP's code of conduct you should consult the Statutory Appointments Officer.

### 3.5 Duty to update details on the Justices of the Peace Database

The Justices of the Peace Database is a publicly available database of JPs and allows the public access to contact details of a JP in their region. It also allows a person to check whether a person who has witnessed a document is a JP of the Northern Territory with a current registration number.

The Justices of the Peace Database is available on the Department of the Attorney-General and Justice website: <https://nt.gov.au/law/processes/justice-of-the-peace-and-commissioner-for-oaths/find-a-justice-of-the-peace>

JPs must update their details on the Justices of the Peace and Commissioners for Oaths database by clicking on the JPs name or notifying the Statutory Appointments Officer (on behalf of the Clerk of the Peace) by email or letter of any of the following changes:

- name;
- contact details;
- suburb or town; and
- employment.

The database should be updated to reflect new details within 28 days as required under section 13(3) of the *Justices of the Peace Act*.

### 3.6 JP registration numbers

Each JP in the Northern Territory is issued with a four-digit registration number beginning with the letters JP (for example, JP1234). JPs must always record their registration number on documents when providing JP services.

## 4. Functions of Justices of the Peace

### 4.1 Functions

The functions of a JP include:

- administering oaths;
- witnessing affidavits;
- witnessing documents;
- certifying a true copy of an original document; and
- issuing search or arrest warrants for the Northern Territory Police.

Item 5(2) of the Code of Conduct requires JP's to update their details on the database as soon as practicable. If details are not updated with 28 days and you have no reasonable excuse, you may be in breach of the Code of Conduct and the *Justice of the Peace Act*.

## 4.2 Administration of Oaths

Oaths vary in different countries according to different laws, constitutions and religious beliefs. The common law allows the form of an oath to accommodate the religion of the person taking the oath. Oaths should be administered according to the person's opinion and conscience. The obligation of an oath is regarded as completely binding on the witness's conscience.

The *Oaths, Affidavits and Declarations Act* sets out the form and procedure for administering an oath (see below).

### 4.2.1 When a JP can administer an oath

Section 7 of the *Oaths, Affidavits and Declarations Act* provides for **who** may administer an oath. A JP can administer an oath provided the person is not in court or before a tribunal. (In court or before a tribunal, the oath will be administered by the presiding judicial officer in court and any sitting member of a tribunal).

### 4.2.2 How to administer an oath

A JP administers the oath by requiring the person, in the JP's presence, to say aloud the words of the preferred oath, either by repeating them after the JP or by reading them.

Section 5 of the *Oaths, Affidavits and Declarations Act* provides that the form of the oath, for the purposes of a law in force in the Northern Territory, must be one of the following, according to the person's preference:

- (a) I promise ... [*content of oath*];
- (b) I swear by Almighty God [*or a deity recognised by the person's religion*] ... [*content of oath*] ... So help me God! [*or as appropriate*].

The religious Christian oath may still be taken while holding the Bible but it is not necessary (eg if a Bible is not available).

The religious form can also be used for other non-Christian (for example, Buddhist, Chinese, Jewish and Islamic) religious oaths by substituting appropriate words.

The person administering the oath must:

- (a) inform the person taking the oath that he or she can choose the form of the oath, unless satisfied the person already knows of that choice; and
- (b) ask the person to choose his or her preferred form of oath. (Refer section 5(2)).

The person taking the oath is to have chosen to take the oath in the form of a promise if:

- (a) they refuse to make a choice; or
- (b) they indicate they do not have a preference; or



- (c) the person administering the oath is satisfied it is not reasonably practicable for the person to take an oath in his or her chosen form. (Refer section 5(3)).

### 4.2.3 Administering oaths for person who cannot speak or need an interpreter

Where a person is unable to say the words aloud or cannot speak English, the JP administering the oath can accept that the person has formally taken the oath if the JP is satisfied that the person:

- (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.

### 4.2.4 Use of religious texts in administering oaths

It is not necessary that a religious text be used in taking an oath (refer section 12(1)). This ensures that the religious oath can still be taken if chosen, even though the JP is unable to secure a particular religious text needed, and the oath cannot be challenged for that reason. Religious texts such as the Bible, if available, should still be provided to a person who chooses to swear on it.

## 4.3 Witnessing Affidavits

An affidavit is a written statement for use as evidence in court proceedings. The person who makes an affidavit is called the deponent. When witnessing an affidavit, a JP must hear the deponent take an oath or affirmation.

The purpose of witnessing (attesting) an affidavit or other document is to ensure the due execution of the document and that such execution may be proved without a successful challenge on grounds of:

- the identity of the person whose signature is witnessed;
- disability or lack of understanding of the document by the deponent; or
- duress or undue influence.

### 4.3.1 Check you are satisfied with the deponent's identity

You must be satisfied that the person preparing to sign is the same person whose name appears at the start of the affidavit. If you are not satisfied, you must ask to see an identity document. You can accept any form of photo identification, unless a particular form of identification is specified. You should not proceed to witness the affidavit if you are not satisfied about the person's identity.

### 4.3.2 Check correct format of the affidavit

You must check that the affidavit is in the correct format. You should become familiar with the example affidavits at Attachment C of this handbook.

An affidavit usually has the court details at the top and the filing details at the bottom of the first page. The deponent's statement also starts on the first page and may continue on

second and subsequent pages.

### 4.3.3 Alterations, erasures and blank spaces in the affidavit

While you do not need to read the content of the affidavit in detail, you must check it for completeness and for any alterations or erasures. You must never sign an affidavit that does not contain the deponent's statements, in other words, that is blank.

If there are alterations or erasures on the affidavit, both you and the deponent must place your initials next to the alterations or erasures.

If there is any blank space left at the end of the deponent's statements, you must place a line through the blank space, to ensure that additional words cannot be inserted after you have witnessed the affidavit. This can be done by drawing separate straight lines at the top and bottom ends of the blank space and then drawing a line from the top right hand side to the bottom left hand side to create a 'Z' over the blank area of the page.

### 4.3.4 Check if the deponent understands

Ask the deponent if he or she understands the contents of the affidavit. You must be satisfied that the deponent understands the nature and purpose of the document before the deponent takes the oath or affirmation.

### 4.3.5 Warn the deponent

You must warn the deponent that it is an offence to promise or swear a false affidavit.

### 4.3.6 The oath is administered by the JP as follows

After asking the person making the affidavit to choose their preferred form of oath, the JP administers the oath according to the deponent's preference by requiring the person making the affidavit, in the presence of the JP, to say the following words of the oath aloud, either by repeating them after the JP or by reading them:

- "I promise that I am the person named as the maker of the affidavit, that the contents of the affidavit are true, that the signature is mine and (if necessary) that this attachment is the attachment referred to in my affidavit."
- "I swear by Almighty God [or a deity recognised by the person's religion] that I am the person named as the maker of the affidavit, that the contents of the affidavit are true, that the signature is mine and (if necessary) that this attachment/exhibit is the attachment/exhibit referred to in my affidavit. So help me God! *[or as appropriate]*"

### Sign the Jurat

After the deponent has taken the oath and signed the affidavit, the jurat (below) must be completed by the JP. It must set out that the affidavit is made by the deponent in the presence of an authorised witness (eg a JP), the place where and the date when the affidavit is made. Each page of the affidavit must also be signed.

**For example:**

Made by [full name of deponent / person making affidavit] at [place] on [date]  
[deponent's signature].....  
In the presence of:  
[signature of JP].....  
JP's full name  
Justice of the Peace and [insert] registration number  
Contact address or phone number

OR

Made at ..... (eg. Darwin)  
In the Northern Territory by  
..... (deponent's full name)  
this ..... (eg. twenty third)  
day of ..... (eg. November) 20..  
In the presence of:  
..... (JP's signature)  
JP's full name  
Justice of the Peace and [insert] registration number  
Contact address or phone number

.....  
(deponent's signature)

Note: The *Oaths, Affidavits and Declarations Act* does not require the deponent to sign the affidavit in the presence of the JP. However, the affidavit must be made on oath in the presence of the JP.

**4.3.7 Annexures in affidavits**

An annexure is an attachment of additional pages. If an annexure is included it must be referred to in the affidavit. If there is more than one annexure, they must all be marked in alphabetical order, for example, Annexure 'A', Annexure 'B' and Annexure 'C'. The alphabetical marking should be placed in a conspicuous position on the annexure, for instance at the top of the page.

For an annexure which is only one page, the following statement must be included on the annexure:

"This is the annexure marked [insert 'A', or 'B' or 'C' etc as appropriate] referred to in the affidavit of [insert name of deponent], declared before me this [insert date] day of [insert month, year]. [insert your signature, full name, JP title and registration number]"

For an annexure which is more than one page, the following statement must be included on the first page of the annexure:

“This and the following [insert number of pages] pages is the annexure marked [insert ‘A’, or ‘B’ or ‘C’ etc as appropriate] referred to in the affidavit of [insert name of deponent], declared before me this [insert date] day of [insert month, year]. [insert your signature, full name, JP title and registration number]”

Note: you only need to sign the first page of an annexure that is more than one page.

The above statement should preferably be placed at the bottom of the first page of the annexure if the space allows it. The statement should not deface or obscure the contents of the annexure.

#### **4.4 Witnessing an affidavit of a person who does not speak English**

You must be satisfied of the identity of the interpreter. If you are not satisfied, you must ask to see identity documents. You can accept any form of photo identification, unless a particular form of identification is specified.

The interpreter should be independent. It is not advisable for a deponent to rely on an interpreter who is not independent, such as a friend or relative. It is also recommended that the interpreter is accredited, such as through the National Accreditation Authority for Translators and Interpreters (NAATI).

Interpreters must take an oath in which they undertake to interpret for the deponent to the best of their ability and in accordance with the law. The interpreter’s oath may take the following effect:

“I swear or promise that I well and truly understand the English language and [name of other] language, and I will truly interpret the contents of the affidavit to the deponent [name of deponent] and also the oath about to be administered to him/her and all other matters and things required of me in connection with this affidavit, according to the best of my skill and ability.”

The affidavit of the non-English speaking deponent should contain additional text in the jurat, confirming that the contents of the affidavit have been interpreted. The following words, or words to the effect, may be used:

“Sworn or promised through the interpretation of [name, address and occupation of interpreter], he/she having first sworn that he/she had truly interpreted the contents of this affidavit and the oath to [name of deponent].”

You must read the affidavit aloud to the deponent, allowing the interpreter to repeat your words in the deponent’s language. It is important that you make sure the deponent understands and agrees with the contents of the deponent’s affidavit. Through the interpreter, you should answer any questions the deponent may have about the content of the affidavit.

## 4.5 Affidavits for use in another Jurisdiction

Depending on the particular laws of the other jurisdiction, a JP may be able to witness an affidavit, oath, affirmation or do other acts for use in another Jurisdiction. The following authorities enable a JP to do the following acts in the following jurisdictions.

### 4.5.1 Australian Capital Territory

An affidavit or oath (including an affirmation) may be witnessed or taken pursuant to 11(1)(b)(ii) of the Oaths and Affirmations Act 1984 (ACT) that is required for a proceeding or any other purpose under a law in force in the ACT.

### 4.5.2 Victoria

An affidavit may be witnessed pursuant to section 124(1)(c) and 125(1) of the Evidence (Miscellaneous Provisions) Act 1958 (VIC) for use in court or for any other authorised purpose.

Attest or verify a document as required by any Act pursuant to section 128 of the Evidence (Miscellaneous Provisions) Act 1958 (VIC).

A declaration as required by any Act pursuant to section 125(1) of the Evidence (Miscellaneous Provisions) Act 1958 (VIC).

### 4.5.3 South Australia

An affidavit or oath (including an affirmation) may be witnessed or taken pursuant to section 66(1)(c) of the Evidence Act 1929 (SA) that is required for the purpose of any court or matter in SA.

Attest, verify and acknowledge any document or signature as required by any Act pursuant to section 67 of the Evidence Act 1929 (SA).

### 4.5.4 Queensland

An affidavit may be witnessed pursuant to section 41(1)(a) of the *Oaths Act 1867* (QLD).

### 4.5.5 Tasmania

An affidavit or document that is required by any Tasmanian law to be witnessed by a Justice of the Peace may be witnessed by a Justice of the Peace in any other state or territory pursuant to section 5(1) of the *Oaths Act 2001* (TAS).

### 4.5.6 Western Australia

An affidavit required for any purpose in WA may be witnessed by a Justice of the Peace in any other state or territory pursuant to section 9(8)(a) of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

### 4.5.7 New South Wales

Any oath, declaration or affidavit required for the purpose of any court or the registration of any instrument or any arbitration pursuant to section 26(1)(b) of the *Oaths Act 1900* (NSW).

#### 4.5.8 Commonwealth

Affidavits for use in an Australian court in proceedings involving the exercise of federal jurisdiction may be witnessed by any Justice of the Peace pursuant to section 186(1) of the *Evidence Act 1995* (Cth).

#### 4.5.9 The form of jurat when witnessing interstate documents

After inserting your signature, title and phone number you must write the particular authorising power. For example if it is an affidavit for a person to use in Victoria you must also include the following words at the end of the jurat:

“This affidavit is witnessed pursuant to sections 124(1)(c) and 125(1) of the *Evidence (Miscellaneous Provisions) Act 1958* (VIC)”

If you are attesting authenticity of a document for use by the person in Victoria, for example a Certificate of Marriage, at the end of your signature, title and phone number you must state:

“I attest this document pursuant to sections 128 of the *Evidence (Miscellaneous Provisions) Act 1958* (VIC)”.

### 4.6 Witnessing Documents

As a JP, you may be asked to act as a witness when a person signs a document. The person who signs the document is called the signatory.

The purpose of your role as a witness is to provide independent verification that the signatory signed the document himself or herself. This independent verification may be very important to a court, a government agency or a business in deciding whether or not to accept the document as genuine.

For this reason, it is essential that you only witness a document after you have actually seen the person sign the document in front of you. You must never act as witness to a document which has already been signed when it is brought to you.

#### 4.6.1 Check if a JP can witness the document

The document will usually list the categories of people who can witness it. You must check if a JP is included. For example, a document for use overseas may require a Notary Public to witness it instead of a JP. If a JP is not listed, you should explain to the person who has asked you to witness it that you cannot do so.

If the document is a form required by a government or business agency, it will have the agency's name and other details on the form. If no such details are stated, or there is no indication that a JP is required to witness the document, you should ask the signatory to explain why he or she believes it needs to be witnessed by a JP. Note that some

documents only require the witness to be an independent adult, rather than a JP. If you witness these types of documents, you should not sign as a JP.

#### **4.6.2 Confirm the name and signatory match, and ask for proof of identity if necessary**

The person signing the document must be the same person named in the document. A person cannot sign a document on behalf of another person.

You must ask for proof of identity:

- if you are not satisfied about the identity of the person intending to be the signatory; or
- if proof of identity is a requirement of the document you have been asked to witness.

You can accept any form of photo identification, unless the document requires a particular form of identification. For example, the document may require you to sight the signatory's passport or citizenship certificate.

If the signatory has no photo identification, and you are not satisfied about his or her identity, you must decline to witness the document.

For further information on checking a person's identity refer to 5.1 checking a person's identity.

#### **4.6.3 Most common documents that may be witnessed by JPs in the NT include:**

- Mortgage – Land Titles Office Form 39;
- Transfer of Lot – Land Titles Office Form 60;
- Power of Attorney – Land Titles Office Form 97;
- Power of Attorney by Direction – Land Titles Form 98; and
- Advance Personal Plan Form – Public Trustee Form.

Note: The above is not an exhaustive list, and there may be other types of documents you may be asked to witness.

#### **4.6.4 Documents that do not require a JP to witness include:**

- Statutory Declaration – may be witnessed an adult witness;
- Wills – may be witnessed by two independent adult witnesses; and
- Enduring Powers of Attorney – Land Titles Office Form was repealed in 2014.

Note: The above is not an exhaustive list, and there may be other types of documents that do not require a JP to witness.

### **4.7 Certifying a true copy of an original document**

A JP may be called upon to witness signatures or attest documents. These may be forms or applications which require the signature to be witnessed by a person who is a lawyer, public notary, JP etc. In some cases, the person must personally know the signatory and

a statutory declaration may need to be made to that effect.

Documents may also need to be authenticated for use outside Australia or in accordance with requirements of a particular statute or law. It is not necessary that these types of documents be made on oath or declared, but the JP must observe the requirements of the law or instructions which apply to the document.

When asked to verify that a copy of a document is a true and correct copy of the original document (this may also be done by a Commissioner for Oaths), a JP must be satisfied that the copy is a true copy of the original document. In many cases, only the issuing body is able to certify to this fact.

The JP must sight the original document at the time of certification of any copies. A JP may decline to act if not satisfied that the copy of the document is a true and correct copy of the original document. Identical photocopies are the most common documents submitted for certification.

#### 4.7.1 Single page documents

An appropriate wording for the certification of a single page document is:

***“I certify this appears to be a true and correct copy of the original document that it purports to be”.***

OR

***“I certify this document appears to be a true copy of the original sighted by me.”***

Dated ...../...../.....

Signed .....

(JP's signature)

JP's full name

Justice of the Peace and [insert] registration number

Contact address or phone number



## 4.7.2 Multiple page documents

When certifying documents containing more than one page, it is acceptable for the JP to initial each additional page of the document certified. The following is appropriate wording for the certification of a multiple page document to be endorsed on the first page of the document:

***“I certify this document of (insert total number of pages) pages appears to be a true copy of the original document that it purports to be.”***

Dated ...../...../.....

Signed .....

(JP's signature)

JP's Full name

Justice of the Peace and [insert] registration number

Contact address or phone number

## 4.7.3 Certifying a copy of a document when the original is in electronic form

In limited circumstances, a JP may certify - as a 'true copy' - a paper copy of an original document, even though the original document is in electronic form. The limited circumstances are:

1. where the JP has observed the paper copy being printed directly from an official website that is under the control of the document's issuing authority; or
2. where the JP has observed the paper copy being printed directly from a computer that is under the control of the document's issuing authority; or
3. where the issuing authority has endorsed a printout of the original document with its official stamp in ink.

(In the case of circumstance 3, further certification by a JP may be unnecessary, unless the organisation which seeks the certified copy requires certification by a JP.)

Apart from the three limited circumstances described above, a JP must not certify a copy of an original document when the original is in electronic form. This is because in all other cases there would be some risk the document could have been altered at a prior stage, using computer editing software.

This prohibition on certifying a copy of an electronic document includes when the document has been transmitted by email, fax or other electronic communication (even when that communication appears to have come from the issuing authority). This is because there would be some risk that the communication was not genuinely from the issuing authority.

Electronic document includes any electronic file format that contains writing, numbers, images, symbols, marks, drawings, maps or plans, and which can be reproduced on paper.

## 4.7.4 Examples and alternative options when a JP is required to certify

### Example 1

A JP observes Ms A print her bank statement directly from the official website of Ms A's bank. The JP may then certify the printout as a true copy of the original.

### Example 2

Mrs C asks a JP to certify a copy of her electricity bill. Mrs C opens her own laptop computer and displays an electronic image of the bill, which she says she downloaded from the web earlier. The JP must decline to certify the copy, (because the JP is unable to confirm the electronic image original was sourced from the issuing authority's official website or a computer under its control).

Alternative option Mrs C could instead make a statutory declaration, attaching the copy as an annexure and declaring that it is a true copy of her original electricity bill that exists only in electronic form. A JP could witness Mrs C making that declaration (but would still be prohibited by this Ruling from proceeding to certify the copy). Mrs C should check first that the relevant organisation will accept her statutory declaration in place of a certified copy.

### Example 3

Mr D asks a JP to certify a copy of an academic transcript issued by an overseas university. Mr D logs into his own email account and shows the JP the academic transcript, which is attached to an email that was sent from the address of 'student.services@ucla'. The JP must decline to certify the copy (because the electronic version was transmitted by email, and there is some risk the email was not genuinely from the issuing authority).

Mr D could instead forward the email to the person or organisation that requested the certified copy of the academic transcript. It would then be a matter for that person or organisation to decide whether or not to accept and rely upon Mr D's emailed copy, or to make their own enquiries with the issuing authority.

## 5.1 Checking a person's identity

When acting as a JP, it is important that you are satisfied about the identity of the person asking you to witness his or her signature. If you already know the person, or have sighted his or her proof of identity on a previous occasion, you do not need to ask for identification in order to be satisfied about the person's identity.

However if for any reason you are not satisfied about the identity of the person, or if sighting proof of identity is a requirement of the document you have been asked to witness, you must ask for identification.

You can accept any form of photo identification, unless the document requires a particular form of identification. For example, the document may require you to sight the person's

passport or citizenship certificate.

If the person has no such identification, or if after checking the identification provided you are still not satisfied about the person's identity, you must decline to witness the document.

## 5.2 Can a person re-sign a document

If someone approaches you to witness a document that is already signed, you may ask the person to cross out the signature and sign it afresh in your presence. However, this must be done after completing the usual steps for witnessing a document.

## 5.3 Witnessing documents for use overseas

If a document is to be used overseas refer the person requiring the service to a Public Notary (see list of Public Notaries in the NT on the Supreme Court website) at: [www.supremecourt.nt.gov.au/about](http://www.supremecourt.nt.gov.au/about). Do not witness a document for use overseas unless there is clear authority that a JP is an acceptable witness.

## 5.4 People with Special Needs

You may be required to provide a service to a person who has various reading and writing difficulties. Persons with special needs include those who are:

- blind;
- illiterate;
- unable to sign (a marksman<sup>1</sup>);
- a child; or
- unable to speak English.

## 5.5 Person is illiterate or blind

If the deponent is blind or illiterate, you or someone else must read the affidavit to the deponent and the deponent is asked if he or she understands and adopts its contents. If the deponent says yes, the deponent can sign his or her signature. If the person is physically able to write but unable to sign his or her name, the deponent fixes his or her mark, with a pen. (Refer Local Court Rule 22.04; Supreme Court Rule 43.02; Work Health Court Rule 17.03).

### Example

#### JANE JONES BY HER MARK: X

A JP must add, in or below the jurat, the following words:

***“This affidavit has been first read to (Jane Jones) in her presence, who appeared to me perfectly to understand the affidavit and fixed her signature [or mark] in my presence***

***..... Justice of the Peace.”***

## 5.6 Person physically unable to sign

Where a person making an oath is physically unable to sign his or her name, or leave a mark, the jurat should be completed as follows (Refer Local Court (Civil Jurisdiction) Rule 22.05; Work Health Court Rule 17.04):

*Made at ..... (eg. Darwin)*

*in the Northern Territory by ..... (full name of deponent)*

*this ..... (eg. twenty third) day of ..... (eg. November) 20..*

*without the deponent affixing any mark or signature, (he/she) being physically unable to do so, and after the affidavit was read to the deponent in my presence, who appeared to me to perfectly understand the affidavit In the presence of:*

*..... (JP's signature)*

JP's Full name  
Justice of the Peace and [insert] registration number  
Contact address or phone number

You should check the identity of the interpreter and that they are a properly accredited interpreter through either the National Accreditation Authority for Translators and Interpreters (NAATI) or the Aboriginal Interpreter Service (AIS).

It is not advisable for a deponent to rely on an interpreter who is not independent, such as a friend or relative.

Interpreters must take an oath in which they undertake to interpret for the deponent to the best of their ability and in accordance with the law. The interpreter's oath may take the following effect:

*"I [promise/swear by Almighty God (or as appropriate)] that I understand the English language and the (name of the other) language of the deponent, and that I will well and truly and faithfully interpret the contents of this affidavit to the deponent (name) and also the oath about to be administered to (him/her). [So help me God! or as appropriate]"*

or such similar terms as are appropriate in the circumstances.

(Refer to Local Court Rule 22.06(1)(a); Work Health Court Rule 17.05(1)(a)).

It is important that you make sure the deponent understands and agrees with the contents of the deponent's affidavit. Through the interpreter, you should answer any questions the deponent may have about the content of the affidavit.

You must warn the deponent that it is an offence to make a false affidavit and allow the interpreter to repeat your words in the deponent's language.

The affidavit of the non-English speaking deponent must contain additional text in the jurat, confirming that the contents have been read with the assistance of the interpreter, the deponent appeared to understand the affidavit and signed in the presence of the JP.

*“This affidavit was made with the assistance of an interpreter (naming the interpreter) who first took an oath that he or she:*

*(i) understands the English language and the language of the deponent (naming the language); and*

*(ii) would truly and faithfully interpret to the deponent the contents of the affidavit and the oath to be administered to the deponent;*

*And that the affidavit was read, with the assistance of the interpreter, to the deponent in my presence, who appeared to understand the affidavit and signed his or her name or made a mark in my presence.*

*..... Justice of the Peace.”*

Refer to Local Court Rule 22.06(1) and Work Health Court Rule 17.05(1). Note that although there is no specific rule in the Supreme Court Rules regarding affidavits of non-English speaking people, the accepted practice of the Supreme Court is the same as the Local Court and the Work Health Court Rules.

## 6. Search Warrants

### 6.1 General

Search warrants may be issued under several Northern Territory acts, the Commonwealth *Crimes Act 1914* or other Commonwealth legislation. The provisions of these Acts for the issue of search warrants differ in some significant respects. However, the general principles outlined here apply equally to search warrants issued under Northern Territory and Commonwealth legislation.

The *Police Administration Act* authorises the issue of search warrants in respect of indictable, simple and regulatory offences. There are other Acts which authorise the issue of search warrants, refer to Attachment D of this Handbook. Each of these Acts make particular provision as to who may apply, the grounds for application and the powers given by the search warrant. It is essential that the provisions of these Acts be referred to whenever considering an application for a search warrant.

Some Acts only provide for Supreme Court Judges or Local Court Judges to issue the search warrants. A JP should ensure that he/she does not issue a warrant which should only be issued by a Judge or a Local Court Judge. The Act and the relevant section references are provided in Attachment D of this Handbook.

This Handbook concentrates on the *Police Administration Act*, it being the Act under which JPs are approached to issue search warrants most frequently. However, JPs should adopt the same practice whenever considering an application for a search warrant, whatever the

Act under which it is sought.

A JP must not issue a warrant unless satisfied that the conditions for the issue of the warrant are fulfilled. This means giving attention to whether the application provides sufficient grounds to justify the intrusion that a warrant causes to the privacy of the citizen.

## 6.2 About search warrants

### 6.2.1 Purpose of a search warrant

When considering an application to issue a search warrant there are important matters that require consideration. For example, search warrants can present difficult issues for JPs such as:

- a search warrant authorises the invasion of a premises without the consent of a person in lawful occupation of possession; and
- for a search warrant to be valid at law certain and necessary conditions must be met.

The NT Parliament, in legislating for the issuing of search warrants has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his/ her privacy and property.

Therefore in order to issue search warrants, a JP must:

- be aware of the legislation;
- be aware of decided cases (case law);
- be aware of the competing interests of law enforcement; and
- be aware of the citizen's right to privacy and protection from unlawful harassment.

The law has been stated in the leading case of *Parker v Churchill* (1985) 9 FCR 316; 63 ALR 326, which provides at page 333:

*"The duty, which the Justice of the peace must perform in respect of information, is not some quaint ritual of the law, requiring a perfunctory scanning of the right formal phrases, perceived but not considered, and followed by simply an inevitable signature. What is required by the law is that the Justice of the Peace should stand between the police and the Citizen, to give real attention to the question whether the information proffered by the police does justify the intrusion they desire to make into the privacy of the citizen and the inviolate security of his personal affairs."*

### 6.2.2 The importance of your role

As a JP you must make a judicial decision based on the specific circumstances of each application and in accordance with the legislative guidelines.

The decision whether or not to issue a warrant is a difficult one. There is no prescribed right or wrong decision but making a decision you cannot justify can have serious repercussions

A JP must be aware of the legislation, decided cases, competing interests of law enforcement and the citizen's right to privacy and protection from unlawful harassment.

No guideline can tell you whether or not to issue a warrant. This handbook is intended to draw your attention to the issues that must be considered prior to making a decision and set some guidelines to be followed. In following the procedures in this handbook, the JP should be in a good position to make the decision, to justify the decision and to show that all requirements have been complied with.

### 6.2.3 Who may apply for a search warrant?

Only a member of the Police Force may apply for a search warrant under the *Police Administration Act*. The prescribed form of warrant under the Act specifically authorises “a member of the police force” to execute the warrant.

In addition to a member of the NT Police Force, some Federal Police Officers also hold appointments as Special Constables in the NT Police Force and are authorised to seek warrants under Territory legislation.

Other Acts may also authorise the issuing of search warrants and provide for other persons, other than police officers to apply. Therefore it is necessary to check the particular act to find out the categories of who may apply.

### 6.2.4 Requirement of first-hand information

The Police Officer making the application must have full (first-hand information) when approaching a JP for a search warrant. This is so the applicant can answer any questions that the JP may ask and so that the applicant is able to swear the contents of the application.

If an applicant for a search warrant does not have first-hand information and the Justice seeks further information, the applicant may well have difficulty providing that information, the applicant would not be able to swear to the truth of the matters in the information. So wherever practicable the applicant should be the officer with the first-hand information or the officer who received the information which forms the basis of the grounds for the information. In large investigations there may be more than one person who has first-hand information.

If the applicant cannot communicate directly with the Justice, another person may apply on their behalf but that person must also have full (first-hand) knowledge so that they can answer any questions the Justice may ask and so they can swear the contents of the application.

### 6.2.5 Verification identification and authorisation

Police officers must establish their membership of the NT Police Force and the JP must satisfy themselves of this fact. This can be done by asking the applicant to produce the member’s warrant (identification) card.

People authorised under other Acts must have specific authorisation (as provided in the Act or through holding a position in a government department or other organisation) Applicants must provide written authorisation or proof of their position. The authorisation of proof of position should be produced.

For example, a conservation officer acting under the authority of section 95 of the *Territory Parks and Wildlife Conservation Act* has the same powers and duties as a member of the Police Force within the context of the *Police Administration Act*. A JP

should be satisfied regarding the bona fides of the conservation officer by asking to see their official identification card – as they do for police.

### 6.2.6 Relevant sections of the Police Administration Act

Sections 117 and 120B of the *Police Administration Act* are the sections under which a JP is given power to issue search warrants and are extracted in this Handbook. A JP must have a good understanding of these sections.

## 6.3 Search warrants for place or of a person

Section 117 of the *Police Administration Act* is extracted below:

### Section 117 – Search Warrants

- (1) Where an information on oath is laid before a justice alleging that there are reasonable grounds for believing that anything connected with an offence may be concealed on the person of, in the clothing that is being worn by or in any property in the immediate control of, a person, the justice may issue a search warrant authorising a member of the Police Force named in the warrant to search the person of, the clothing that is being worn by or property in the immediate control of, the person and seize any such thing that he may find in the course of the search.
- (2) Where an information on oath is laid before a justice alleging that there are reasonable grounds for believing that there is at a place anything relating to an offence, the justice may issue a search warrant authorising a member of the Police Force named in the warrant to enter and search the place and seize anything relating to an offence found in the course of the search at the place.
- (3) A justice shall not issue a warrant under subsection (1) or (2) in relation to an information unless:
  - (a) the information sets out or has attached to it a written statement of the grounds upon which the issue of the warrant is sought;
  - (b) the informant or some other person has given to the justice, either orally or by affidavit, such further information, if any, as the justice requires concerning the grounds on which the issue of the warrant is being sought; and
  - (c) the justice is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where a justice issues a warrant under subsection (1) or (2) he shall record in writing the grounds upon which he relied to justify the issue of the warrant.
- (5) There shall be stated in the warrant issued under this section the following particulars:
  - (a) the purpose for which the search or entry is authorised;
  - (b) a description of the nature of the things authorised to be seized; and
  - (c) the date, not being a date later than 14 days after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (6) A member may, at any time before a warrant issued under subsection (1) or (2) is executed, make application to a justice to withdraw the warrant.



### 6.3.1 The application for a search warrant is made by 'information'.

Where the word application is used, it is a reference to the police officer attending before the JP to consider 'information' for a search warrant.

Information is a statement made on oath, setting out or attaching to it a written statement of the reasonable grounds for believing that the things or person named in the information are connected with or related to an offence and requesting the issue of a warrant.

The form of the information is not provided for in any Northern Territory legislation, however, the most recent forms used by the Police for the laying of information are included at Attachment E of this Handbook.

The information must:

- contain sufficient facts to ground a reasonable belief that the named place/persons may contain/conceal/control things connected with an offence (ie. a statement of belief will not be sufficient grounds on which to issue a warrant);
- describe the nature of the things to be searched for;
- explain how the things to be searched for will afford evidence of the commission of the offence; and
- be made on oath by the person laying the information before the JP.

The informant may, in addition to matters relied upon in the information made on oath, give such further information as the JP requires concerning the grounds on which the issue of the warrant is being sought (see section 117(3)(b)).

Such further information can be given to the JP by a police officer or some other person, orally or by affidavit. If given orally, it should be accurately recorded in writing, signed by the JP and attached to the (written) information retained by the JP.

Any further information or material received by the JP during the course of the application must be attached to the information and retained by the JP.

### 6.3.2 Meaning of words 'connected with an offence' and 'relating to an offence'

The words 'connected with an offence' in sub-section 117(1) and 'relating to an offence' in sub section 117(2) refer to the same thing.

A thing can be said to be 'connected with' or 'relating to' an offence if there are reasonable grounds for believing that it will assist directly or indirectly in disclosing that an offence has been committed or in establishing or revealing the details of the offence, the circumstances in which it was committed, the identity of the person or persons who committed it or any other information material to the investigation of those matters.

Things which afford evidence of an element of an offence and which also tend to exculpate a person from criminal liability may be things which are connected with/relating to an offence.

### 6.3.4 Taking the oath as to the truth of the information before the Justice of the Peace

The JP should first ask the informant to choose their preferred form of oath.

The JP should then require the informant to take an oath as to the truth of the information, by requiring the informant, in the JP's presence, to say the following words of the oath aloud, either by repeating them after the JP or by reading them, according to their preferred form of oath:

- "I promise that the contents of this information are true."
- "I swear by Almighty God [or a deity recognised by the person's religion] that the contents of this information are true. So help me God! [or as appropriate]"

The JP should then require the informant to say the following words of the oath aloud, either by repeating them after the JP or by reading them, in the presence of the JP and in accordance with their preferred form of oath:

- "I promise to answer truthfully all questions put to me by you regarding this information."
- "I swear by Almighty God [or a deity recognised by the person's religion] to answer truthfully all questions put to me by you regarding this information. So help me God! [or as appropriate]"

If the informant takes the Christian religious oath, he/she may stand holding the Bible (if available) in his or her right hand.

## 6.4 Form of search warrants and process

The form of a warrant is not provided for in any Northern Territory legislation; however the most recent warrant forms issued under section 117 for person/place searches are included (refer Attachment E).

A warrant issued under section 117 must state a date upon which it ceases to have effect, not being later than 14 days after its date of issue. However, the JP may issue a warrant for any period less than 14 day.

When calculating the end date of the warrant, do not include the date on which the warrant is issued. For example, a 14 day warrant issued on 10 June will expire at midnight on 24 June.

A police officer may, at any time before a warrant issued under section 117(1) or 117(2) is executed, make application to a JP to withdraw the warrant.

In considering whether the information made on oath provides reasonable grounds for belief, it is necessary to keep in mind that belief is more than a suspicion. Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking. The facts which can reasonably ground a suspicion may be quite insufficient to reasonably ground a belief.

Where a JP issues a warrant under section 117, he/she is required to record in writing the grounds upon which he/she relied, to justify the issue of the warrant. See section 117(4).

The warrant contains the Certificate of Justice as can be seen on the warrant forms included later in this section.

It is important for the JP to identify accurately each ground relied upon by him/her as opposed to the grounds relied upon by the police officer seeking the issue of the warrant. The JP may, in assessing and testing the material placed before him/her, form a different view to the police officer as to the relevance or weight of the material.

Although section 117 provides that the JP “may” issue a search warrant, if the JP to whom the application is made is satisfied that the material is sufficient to induce the relevant belief in a reasonable person, the warrant should be granted. The word “may” simply provides the power to the JP to grant the warrant. If the conditions precedent is established, then the warrant must be issued.

The warrant must contain:

- information in relation to a specific offence;
- a description of the offence with sufficient clarity; and
- a sufficient description of the documents or things the subject of the warrant to enable the persons whose premises are to be searched, and the persons to whom the warrants are directed, to know the object of the search.

The JP should have material before him/her which he/she can relate to an offence and which does relate to an offence, and the warrant should disclose the nature of the offence in sufficient particulars so as to indicate the area of search.

It is not essential to the validity of a search warrant under section 117 that it contain the name of the alleged offender. It may be that one of the purposes of obtaining the search warrant is to obtain evidence to identify the offender of the offence in question. If, however, the search warrant does identify the suspected offender, the information must satisfy the JP that there are reasonable grounds for the belief that the offence particularised in the information will afford evidence of the commission of the offence by the person named.

The warrant cannot authorise the seizure of things in general or things which are related to offences in general. The warrant should refer to a particular offence and authorise seizure of ‘any such thing’ related to or connected with that offence.

The content of the warrant should not be wider than is necessary to carry out the legislative purpose. In a case under sub-section 117(2) for example, it would be wrong to issue a warrant which authorised a general search of bank premises, when the information pointed to one forged cheque. Even a search for all documents relating to a particular account may be too wide. There should be no limitation on an adequate search, but it is a function of the information to show how wide that search may have to be, and the function of the JP to ensure that the warrant does not authorise anything wider.

The following is an example given by the High Court in *George v Rockett* (1990) 170 CLR 104 of an impermissible search because of the width of the description of the object of the search. Their Honours said at pp 118-119.

“Suppose the sworn complaint placed before a Justice of the Peace establishes reasonable grounds for suspecting that the books and records of a listed public company in respect of a particular financial year contain an entry which will afford evidence that an executive of the company has appropriated a sum of money to the credit of his personal account with a particular bank and the complaint shows that there is evidence that the executive had no authority so to apply the money. In such a case, the complaint would establish reasonable grounds for suspecting that the particular entry existed and reasonable grounds for believing that, if it did exist, it would (ie ‘will’) afford evidence of the commission of an offence. The complaint before the Justice of the Peace would, in those circumstances, be adequate to justify the issue of a warrant to search for and seize any written entry to the designated effect in the company’s books and records for the relevant year. It would, of course, be necessary that the suspected entry be identified with sufficient precision.

On the other hand, the material before the Justice of the Peace could not justify the issue of a warrant authorising search for or seizure of all the books and records of the company for the particular year. First, if the object of the authorised search and seizure were described in terms of ‘all those books and records’, the material before the Justice of the Peace would not establish that the object so described would afford evidence of the commission of an offence. That material would only have established reasonable grounds for suspecting that the object (ie the books and records for the relevant year) contained an entry that would afford such evidence. Secondly, even if the material before the Local Court Judge had gone so far as to establish reasonable grounds for believing that such an entry existed somewhere in those books and records, the description of the object of the authorised search and seizure would be unjustifiably wide. It would extend to authorising search for, and seizure of, records which were unrelated to the particular entry and which were not suggested to afford evidence of the relevant kind”.

## 6.6 Search Warrants – Dangerous Drugs

Section 120B of the *Police Administration Act* is extracted below:

### Section 120B Search Warrants

- (1) Where it is made to appear to a justice of the peace, by application on oath, that there are reasonable grounds for believing that:
  - (a) there is at a place a dangerous drug, precursor or drug manufacturing equipment; or
  - (b) a dangerous drug, precursor or drug manufacturing equipment may be concealed on a person or on or in property in the immediate control of a person; or
  - (ba) that a dangerous drug, precursor or drug manufacturing equipment may, within the next following 72 hours:
    - (i) be brought on or into a place; or
    - (ii) be concealed on a person or on or in property in the immediate control of a person, the justice may issue a warrant authorising a member of the Police Force named in the warrant, with such assistance as the member thinks necessary, to search:
  - (c) in a case referred to in paragraph (a) or (ba)(i):
    - (i) the place;
    - (ii) any person found at the place; and
    - (iii) any person who enters the place while the search is in progress; and
  - (d) in a case referred to in paragraph (b) or (ba)(ii), or in respect of a person referred to in paragraph (c)(ii) or (iii):
    - (i) the person;
    - (ii) the clothing worn by the person; or
    - (iii) the property in the immediate control of the person.
- (2) A warrant issued under subsection (1)(a) or (ba)(i) authorises the member to whom it is issued to direct a person referred to in subsection (1)(c)(ii) or (iii) to remain at the place for as long as is reasonably required for the purposes of the search of the place and of the person.

Section 120A of the *Police Administration Act* defines a ‘dangerous drug’ as defined in section 3 of the *Misuse of Drugs Act*. The *Misuse of Drugs Act* defines a ‘dangerous drug’ as a substance specified in Schedule 1 or 2 or any extract or part of a prohibited plant referred to in Schedule 1 or 2.

Section 120B of the *Police Administration Act* empowers a JP, where there are reasonable grounds for believing that there is a dangerous drug, precursor or drug manufacturing equipment, to issue a search warrant authorising a police officer named in the warrant, with such assistance as the police officer thinks necessary, to search a named place, aircraft, vehicle, ship, person or property.

A search warrant issued under section 120B does not require the support of written information and the JP must determine a reasonable timeframe in which to execute the warrant (compared with the 14 day expiry time contained in a section 117 search warrant). A reasonable timeframe will be whatever is a reasonable amount of time for search of the place or person to be conducted (see section 120B(2))

You must send the original warrant issued under section 120B(4), e.g. where the application was made by telephone, telex, radio etc, to the Commissioner of Police within seven days after it is issued (section 120B(6)).

The police officer, who for reasonable cause may not have the warrant, may produce a copy of the warrant completed in substantially the terms of the warrant issued and write on that copy form of warrant a statement that a warrant in those terms was issued giving the name of the JP who issued the warrant and the date, time and place on and at which it was issued (section 120B(7) and (8)).

Refer to Attachment E for an example copy of the NT Police Search Warrant form – Drugs – section 120B.

### **6.6.1 Search warrant authorizes acts including use of force**

Once a search warrant is issued under section 120B a member of the police force may seize certain things, such as, but not limited to, a dangerous drug, money or a vehicle, being things about which the police officer has reasonable grounds to suspect will form evidence of the commission of an offence under the *Misuse of Drugs Act*,

A police officer may also use such reasonable force as is necessary to break into, enter and search the place, aircraft, vehicle or ship to be searched. This includes force necessary to open any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not found on or in the place, aircraft, vehicle or ship.

## **6.7 Arrest Warrants**

Where information on oath is laid before a JP alleging there are reasonable grounds for believing that a person has committed an offence, section 121 empowers the JP to:

- issue a warrant for the arrest of a person and for bringing the person before a court specified in the warrant to answer the information and to be further dealt with according to law, or
- issue a summons requiring the person to appear before a court to answer the information.

At any time after a JP has issued a summons requiring a person to appear before a court to answer an information and before a summons has been duly served on the person, a JP may issue a warrant for the arrest of a person to bring them before a court specified in the

warrant to answer the information and to be further dealt with according to law.

A police officer may at any time before a warrant issued under section 121 is executed, make an application to a JP to withdraw the warrant.

### 6.7.1 Relevant Provisions of the Police Administration Act

Section 121 of the Police Administration Act is extracted below:

#### Section 121 Arrest Warrants

- (1) Where an information on oath is laid before a justice of the peace alleging that there are reasonable grounds for believing that a person has committed an offence:
  - (a) the justice of the peace may, subject to subsection (3), issue a warrant for the arrest of the person and for bringing him before a court specified in the warrant to answer to the information and to be further dealt with according to law; or
  - (b) the Justice may issue a summons requiring the person to appear before a court to answer to the information.
- (2) At any time after a justice of the peace has issued a summons requiring a person to appear before a court to answer to an information under subsection (1) and before the summons has been duly served on the person, a Justice may, subject to subsection (3), issue a warrant for the arrest of the person and for bringing him before a court specified in the warrant to answer to the information and to be further dealt with according to law.
- (3) A justice of the peace shall not issue a warrant under subsection (1) or (2) in relation to an information unless:
  - (a) an affidavit has been furnished to the Justice setting out the grounds on which the issue of the warrant is being sought;
  - (b) the informant or some other person has furnished to the justice of the peace such further information, if any, as the justice of the peace requires concerning the grounds on which the issue of the warrant is being sought; and
  - (c) the justice of the peace is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where an informant furnishes information to a justice of the peace for the purposes of subsection (3)(b), he shall furnish the information on oath.
- (5) Where a justice of the peace issues a warrant under subsection (1), he shall state on the affidavit furnished to him in accordance with subsection (3) which of the grounds, if any, specified in that affidavit he has relied on to justify the issue of the warrant and particulars of any other grounds relied on by him to justify the issue of the warrant.
- (6) Nothing in this section affects the application of section 19A of the *Service and Execution of Process Act* 1992 of the Commonwealth.
- (7) A member may, at any time before a warrant issued under subsection (1) is executed, make application to a Justice to withdraw the warrant.
- (8) Where a warrant issued under subsection (1) has been executed the person arrested shall be charged with the offence specified in the warrant.

### Section 131 Release

- (1) A person apprehended under section 128 may, at any time after such apprehension, request a member to take him before a justice of the peace in order that the person may make an application to the justice of the peace for his release.
- (2) Where a request is made of a member under subsection (1) he shall, if it is reasonably practicable for the person to be brought before a justice of the peace forthwith, bring the person, or cause the person to be brought, before the justice of the peace forthwith unless sooner released.

## 6.8 Search an Arrest Warrants by Telephone

Sections 118 and 122 of the *Police Administration Act* allow a police officer to make an application for the issue of a search warrant or an arrest warrant by telephone. A JP may issue a search warrant to a police officer over the telephone without sighting the written information.

A warrant issued by telephone must in all respects comply with the requirements of a warrant issued under section 117.

A telephone warrant may only be issued where it is impracticable for the police officer to make an application in person.

‘Impracticable’ is not synonymous with ‘impossible’. The latter is absolute; the former introduces reasons and involves some regard for practice and circumstances.

Factors which may render it impracticable for a police officer to make the application in person include:

- urgency of the matter;
- the distance involved in travelling to a location where a JP is located; and
- inability to reach a JP because of flooding, blocked roads.

Where applying for a telephone warrant the applicant must be a member of the NT Police. The JP must be satisfied, in whatever manner circumstances permit, that the applicant is a member of the NT Police. In circumstances of urgency, the JP may have to accept the assertion of the applicant that he or she is a member of the Police.

The JP should question the applicant and be satisfied at the outset that:

- the applicant has not been refused the same application by any other JP; and
- the applicant has no cause to suspect that an application in respect of the same matter has been made by another police officer to another JP and been refused.

In the event that a previous application relating to the same matter made by the police officer or another member has been refused, then the JP must decline to entertain the application – see section 118(9) – unless the police officer making the application satisfies the JP that the police officer has, since the time of the original application, received further information or evidence which is material to the application – see section 118(10).



Before making an application by telephone, the police officer must prepare an information and, if required by the JP, an affidavit setting out the grounds on which the issue of the warrant is sought. The application may be made before the information and affidavit have been made on oath if necessary to do so. This is to cover situations where the matter is urgent or there is no person before whom the applicant can take the oath (see section 118(2)).

A JP may issue an arrest warrant if satisfied there are reasonable grounds for issuing the warrant (sections 118(3) and 122(3)).

Where a JP issues a telephone warrant:

- a) the JP must complete and sign the warrant;
- b) the JP must record the date and time that the warrant was issued;
- c) the JP must inform the police officer by telephone of the terms of the warrant signed by him/her, and record on the warrant his/her reasons for issuing it; and
- d) the police officer must complete in duplicate, a form of warrant in the terms furnished to him/her by the JP and write on it the name of the JP who issued the warrant and the date on which and the time at which it was issued (sections 118(4) and 122(4)).

The JP must retain the original warrant issued by him/her for later comparison with a duplicate of the search warrant completed by the police officer requesting the warrant.

The authority for the police officer to conduct the search specified in the warrant is the duplicate form of warrant completed by the police officer.

The police officer must, no later than the day next following the date of the expiry of the warrant, forward to the JP who issued the warrant the form of warrant prepared by the police officer and the information and affidavit, if any, duly made on oath in connection with the issue of the warrant (sections 118(5) & 122(5)).

The JP should ensure that the information has been made on oath before a person entitled to administer an oath.

Once the JP receives the copy of the duplicate warrant completed by the police officer, the JP must:

- check the copy of the duplicate warrant completed by the police officer with the warrant signed by the JP
- if satisfied that they are in substance identical, note this fact on the warrant signed by him/her, and
- forward the original warrant together with the duplicate warrant and the information (and affidavit if any) to the Commissioner of Police or to such member of Police as may be specified by the Commissioner (sections 118(6) and 122(6)).

**\*Note:** Section 117(4) requires a JP issuing a warrant to record in writing the grounds upon which he/she relied to justify the issue of the warrant. However, in the case of a telephone warrant, section 118(4)(b) requires the JP issuing a warrant to record on the warrant his/her reasons for issuing it. There is no real distinction between what are grounds for the purposes of section 117(4) and what are reasons for the purposes of section 118(4)(b). What is important is that the grounds/reasons be recorded in writing in

the manner directed.

### 6.8.1 Relevant Provisions of the Police Administration Act

Section 118 of the Police Administration Act is extracted below:

#### Section 118 Search warrant issued by telephone

- (1) Where it is impracticable for a member of the Police Force to make application in person to a justice of the peace for a search warrant under this Act, the member may make application for a search warrant to a justice by telephone in accordance with this section.
- (2) Before making application to a justice by telephone under subsection (1), a member shall prepare an information on oath of a kind referred to in section 117(1) or (2) and, where required by the justice of the peace, an affidavit setting out the grounds on which the issue of the warrant is sought, but may, if it is necessary to do so, make the application before the information and the affidavit, if required, have been made on oath.
- (3) Where a justice of the peace is satisfied, upon application made under subsection (1), that there are reasonable grounds for issuing a warrant, the justice may issue such a search warrant as he could issue under section 117 if the application had been made to him in accordance with that section.
- (4) Where a justice of the peace issues a warrant under subsection (3):
  - (a) the justice of the peace shall complete and sign the warrant; and
  - (b) the justice of the peace shall inform the member by telephone of the terms of the warrant signed by him, and record on the warrant his reasons for issuing it; and
  - (c) the member shall complete in duplicate a form of warrant in the terms furnished to him by the justice of the peace and write on it the name of the justice who issued the warrant and the date on which and time at which it was issued.
- (5) Where a justice of the peace issues a warrant under sub-section (3), the member shall, not later than the day next following the date of the expiry of the warrant, forward to the justice who issued the warrant the form of warrant prepared by the member and the information and affidavit, if any, duly made in connection with the issue of the warrant.
- (6) Upon receipt of the documents referred to in subsection (5), the justice of the peace shall compare the copy of the form of warrant forwarded to him with the warrant signed by him and, if he is satisfied that they are in substance identical, he shall note this fact on the warrant signed by him and forward the warrant together with the copy of the form of warrant and the information and affidavit, if any, to the Commissioner of Police or to such member of the Police Force as may be specified by the Commissioner.
- (7) A form of warrant completed by a member in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the justice, authority for any entry or seizure that it authorises.
- (8) Where it is necessary for a court, in any proceeding, to be satisfied that any entry or seizure was authorised by a warrant issued by a justice of the peace in accordance with this section, and the warrant signed by the justice in accordance with this section is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry or seizure was not authorised by such warrant
- (9) Where an application has been made to a justice pursuant to subsection (1) and the application has been refused by the justice of the peace subject to subsection (10), neither the member of the Police Force who made the application nor any other member who has any cause to suspect that an application has been made by another member under subsection (1) in respect of the same matter, shall make a further application to any justice pursuant to subsection (1) in respect of that matter.
- (10) Where an application made pursuant to subsection (1) has been made to a justice of the peace and the application has been refused by that justice of the peace a further application may be made to a justice of the peace where a member satisfies a justice that the member has, since the time of the original application, received further information or evidence which is material to an application under subsection (1).

**\*Note:** provisions relating to an arrest warrant by phone (section 122) are in identical terms as above.

## 6.9 Check List for Issuing Search Warrants

- 1) The applicant is a member of the Northern Territory Police.
- 2) The information has been made:
  - a. on oath (section 117(1) and (2)) (search warrant person/place), or
  - b. an oath has been administered by telephone, telex, radio (section 120B) (search warrant dangerous drugs).
- 3) The information sets out or has attached to it a written statement of the grounds upon which the issue of the warrant is sought (section 117(3)(a)).
- 4) Any further information concerning the grounds on which the issue of the warrant is sought, has been provided on oath (section 121(3)).
- 5) Any further information provided by the informant has been recorded.
- 6) The warrant:
  - a. records the reasons for issue of the warrant (sections 117(4), 118(4)(b), 122(4)(b));
  - b. states the purpose for which the search or entry is authorised (section 117(5)(a));
  - c. contains particulars of any other grounds relied on to justify the issue of the warrant (section 121(5)) (arrest warrant);
  - d. contains a description of the nature of the things authorised to be seized (section 117(5)(b)); and
  - e. specifies date of expiry or period warrant is in force:
    - i. contains a date, not being a date later than 14 days after the date of issue of the warrant, upon which the warrant ceases to have effect (section 117(5)(c)), or
    - ii. specifies the period during which it remains in force (section 120B(5));
  - f. identifies the place, person or property at which a dangerous drug is concealed or may be concealed within the next 72 hours (section 120B(1)); and
  - g. is signed and dated.

### 6.9.1 In addition, if the application is by telephone

- 1) It is impracticable for the police officer to make the application in person.
- 2) An information/affidavit has been prepared (but may not yet be made on oath).
- 3) No previous application for the issue of a warrant in respect to the same matter has been made. If so, is there further evidence available?
- 4) The police officer has been informed of the terms of the warrant.
- 5) The date and time of the issue of the warrant has been recorded on the warrant.

## Code of Conduct for Justices of the Peace in the Northern Territory

This code establishes acceptable standards of conduct for Justices of the Peace appointed in the Northern Territory under the *Justices of the Peace Act*.

### 1. Access to services

- (1) A Justice of the Peace must not unreasonably refuse to provide Justice of the Peace services and must treat all persons seeking such services with courtesy, dignity and respect.
- (2) A Justice of the Peace must deal with requests for Justice of the Peace services in a timely manner.

### 2. Conduct and integrity

- (1) A Justice of the Peace must not engage in dishonest activities or conduct himself or herself in such a way as to bring the office of Justice of the Peace into disrepute.
- (2) Justice of the Peace must keep safe and must not reveal information which is private, confidential or commercially-sensitive and which the Justice of the Peace has obtained when providing Justice of the Peace services, unless authorised by law.
- (3) A Justice of the Peace must remain independent and impartial when providing Justice of the Peace services.
- (4) If a Justice of the Peace has a personal, family, financial or business interest in a matter before them, the Justice of the Peace must disclose the interest to the person seeking Justice of the Peace services or decline to provide Justice of the Peace services in that matter.
- (5) If the term of appointment of a Justice of the Peace expires and the person has not been reappointed or if the Justice of the Peace has been removed from office by the Administrator, the person must immediately cease providing Justice of the Peace services.

### 3. Financial and personal benefit

- (1) A Justice of the Peace must not charge a fee or accept a gift or donation, either directly or indirectly, for providing Justice of the Peace services.
- (2) A Justice of the Peace must not use the title of Justice of the Peace to claim or imply that he or she has any special authority, credibility or status, or to advance or appear to advance his or her own interests in any business, commercial or personal transaction or dispute.
- (3) However, a Justice of the Peace may use the title of Justice of the Peace to advertise his or her availability to perform Justice of the Peace services for the public or clients (including by using the title after his or her name on a business card or

letterhead, whether in hard copy or electronic form).

#### 4. Knowledge and competence

- (1) A Justice of the Peace must be familiar with and follow the provisions in the Department of the Attorney-General and Justice's publication Justice of the Peace Handbook.
- (2) A Justice of the Peace must never witness a document unless he or she is satisfied as to the identity of the person.
- (3) Where an Act of Parliament provides that a declaration or instrument be signed or attested by a Justice of the Peace, the Justice of the Peace must do so in accordance with any instructions under that Act and any instructions on the declaration or instrument.
- (4) A Justice of the Peace must not offer legal advice in his or her capacity as a Justice of the Peace.

#### 5. Notifications

- (1) A Justice of the Peace must notify the Clerk of the Peace in writing of any of the following matters as soon as practicable after:
  - (a) being convicted of a criminal offence;
  - (b) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency, complaint handling or dispute resolution body or professional, business, trade or industry association;
  - (c) becoming bankrupt or making any debt agreement or personal insolvency agreement under the *Bankruptcy Act 1966* of the Commonwealth;
  - (d) being disqualified from being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth; or
  - (e) being suspended or disqualified from holding any licence, registration, certificate or membership in relation to any profession, business, trade or industry.

- (2) A Justice of the Peace must update their details on the Justice of the Peace database or notify the Clerk of the Peace in writing of any of the following changes as soon as practicable after that change:
- (a) a change to the name of the Justice of the Peace;
  - (b) a change to his or her postal, residential or email address; or
  - (c) a change to the telephone number on which the Justice of the Peace can be contacted in relation to Justice of the Peace services.

Acknowledgement of sources: Schedule 1 to the Justices of the Peace Regulations 2014 (NSW)

**Attachment B**

NORTHERN TERRITORY OF AUSTRALIA

***OATHS, AFFIDAVITS AND DECLARATIONS ACT***

As in force at 1 August 2012

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**NORTHERN TERRITORY OF AUSTRALIA**

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This reprint shows the Act as in force at 1 August 2012. Any amendments that commence after that date are not included.

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***OATHS, AFFIDAVITS AND DECLARATIONS ACT***

An Act about oaths, affidavits and declarations

**Part 1 Preliminary matters**

**1 Short title**

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

**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 23.

***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 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 one of the following, according to the person's preference:
  - (a) I, ... [full name] ..., promise ... [content of oath] ;
  - (b) I, ...[full name] ..., swear by Almighty God *[or a deity recognised by the person's religion]* ... [content of oath] ...  
So help me God! *[or as appropriate]*.
- (2) If an oath is to be taken by a person (**person A**), the person administering the oath must:
  - (a) inform person A that he or she can choose the form of the oath, unless satisfied person A already knows of that choice; and
  - (b) ask person A to choose his or her preferred form of oath.
- (3) Person A is taken to have chosen to take the oath in the form mentioned in subsection (1)(a) if:
  - (a) person A refuses to make a choice; or
  - (b) person A indicates he or she does not have a preference;

or

  - (c) the person administering the oath is satisfied it is not reasonably practicable for person A to take an oath in his or her chosen form.
- (4) The person taking the oath may insert into words mentioned in subsection (1)(a) or (b), after his or her name, his or her address or other identifying information.

### 6 Content of oath

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.

## 7 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.

## 8 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:

- (a) if the oath is to be taken in the form mentioned in section 5(1)(a) – “Do you, ... [full name] ..., promise ... [content of oath] ?”; or

- (b) if the oath is to be taken in the form mentioned in section 5(1)(b) – “Do you, ... [full name] ..., swear by Almighty God [or other deity] ... [content of oath] ... So help you God! [or as appropriate]?”.
- (2) Person A takes the oath if he or she gives an unconditional affirmative answer.
- (3) If the oath is taken in the form mentioned in section 5(1)(b) the words “So help me God!” [or as appropriate] are taken to be an unconditional affirmative answer.
- (4) 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.
- (5) The person administering the oath may insert into the words mentioned in subsection (1) (a) or (b), after the name of the person taking the oath, that person’s address or other identifying information.

## 9 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 9*

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

## 10 Other Acts may provide for form and administration of oath

- (1) Sections 5 to 9 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) (a) 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 8 or 9 (as appropriate).

**11 Alternative form and administration of oath**

Despite sections 5 and 8 to 10, 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.

**12 Matters relating to oath in religious form**

- (1) It is not necessary that a religious text be used in taking an oath.
- (2) The fact that at the time of taking an oath a person did not have a religious belief, or did not have a religious belief of a particular kind, does not affect the validity of the oath.

**Part 3 Affidavits**

**14 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 15 to witness the affidavit.

## 15 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.

## 16 Other Acts may provide for how affidavit to be made

Sections 14 and 15 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**

### **17 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.

### **18 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, ... [full name] ..., solemnly and sincerely declare ..." followed by the content of the declaration.
- (2) A statutory declaration must be made:
  - (a) in writing under section 19; or
  - (b) as a recording under section 20.
- (3) An unattested declaration must be made in writing under section 21.
- (4) A person making a statutory declaration or unattested declaration may insert into the words mentioned in subsection (1), after his or her name, his or her address or other identifying information.

### **19 Written statutory declaration**

- (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).

## 20 Recorded statutory declaration

- (1) A statutory declaration may be made as an audio or audio-visual recording of any kind.
- (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).

## 21 Unattested declarations

- (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 21*

*An unattested declaration does not have to be witnessed.*



**22 Other Acts may provide for how declaration to be made**

Sections 18 to 21 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**

**23 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.

**24 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
  - (ii) address or telephone number.

## Part 6 Miscellaneous

### 24A Minor non-compliance does not affect validity

- (1) Inadvertent non-compliance with a formal requirement that does not materially affect the nature of an oath, affidavit, statutory declaration or unattested declaration does not invalidate or otherwise affect the force and effect of the oath, affidavit or declaration.
- (2) In this section:  
**formal requirement** means a requirement imposed by this or any other Act about the form or content of an oath, affidavit or declaration or how it is to be administered or made.

### 25 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 15(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 15(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.

### 26 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 14 and 15 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 25, purporting to have been counter-signed in accordance with that section was so counter-signed.

**27 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.

**28 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.

## 29 Regulations

The Administrator may make regulations under this Act.

## Part 7 Repeals and transitional matters

### Division 1 Repeals

## 30 Acts repealed

The Acts specified in Schedule 2 are repealed.

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

## 31 Definitions

In this Division:

**commencement** means the commencement of section 30.

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

## 32 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 23(2) of this Act.

## 33 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.

**SCHEDULE 1 Content of oath**

**section 6(b)**

1.	Person who is to give evidence on oath in	... 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>[to this tribunal to this 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 by [name of person for whom interpreter is to interpret] and do all other matters and things required of me in this case to the best of my
5.	Person making affidavit	... that: <i>[as required by section 14(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.

Note for Schedule 1

Schedule 1 sets out the content of an oath for when the oath is recited in the first person by the person taking the oath. If an oath is recited in the third person by the person administering it, any necessary changes may be made to the content of the oath.

**SCHEDULE 1 Repealed Acts**

**section 30**

Oaths Ordinance 1939	Act No. 23 of 1939
Oaths Ordinance 1952	Act No. 2 of 1952
Oaths Ordinance 1953	Act No. 13 of 1953
Oaths Ordinance 1960	Act No. 14 of 1960
Oaths Ordinance 1965	Act No. 34 of 1965
Oaths Ordinance 1967	Act No. 24 of 1967
Oaths Ordinance 1970	Act No. 63 of 1970
Oaths Ordinance 1978	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
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## ENDNOTES

### 1 KEY

#### Key to abbreviations

amd = amended  
om = omitted bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order app = appendix  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
L = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

(Act No. , )

Assent date 18 November 2010  
Commenced 1 March 2011 (Gaz G7, 16 February 2011, p 4)

NORTHERN TERRITORY OF AUSTRALIA

**JUSTICES OF THE PEACE ACT**

As in force at 1 May 2016

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**Schedule 1**

**Schedule 2**

**ENDNOTES**

NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 2016

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JUSTICES OF THE PEACE ACT

An act to consolidate legislation in relation to the office of justice of the peace

**1 Short title**

This Act may be cited as the *Justices of the Peace Act*.

**2 Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

**3 Definitions**

In this Act, unless the contrary intention appears:

***clerk of the peace*** means the person appointed under section 13 to be the clerk of the peace.

***justice of the peace*** means a person appointed under section 5 to be, or a person who by virtue of holding office in accordance with section 6 is, a justice of the peace.

**4 Office of justice of the peace**

There shall be an office of justice of the peace.

**5 Appointment of justice of the peace**

- (1) The Administrator may appoint to the office of justice of the peace as many persons as are necessary to carry out the functions of justices of the peace in the Territory.
- (2) An appointment under subsection (1) may be:
  - (a) limited to a term of years; and
  - (b) conditional on the person appointed residing in a particular locality.



**6 Certain office holders to be justices of the peace**

- (1) A person who holds or acts in an office specified in Schedule 1 is, by virtue of holding or acting in the office, a justice of the peace.
- (2) A person referred to in subsection (1) ceases to hold office as a justice of the peace if:
  - (a) the person ceases to hold or act in an office specified in Schedule 1; or
  - (b) the person's appointment as justice of the peace is terminated under section 8(1).

**7 Oath of office**

- (1) A justice of the peace appointed under section 5 must, before proceeding to exercise the powers or discharge the duties of the office, take an oath in accordance with Schedule 2.
- (2) Where a justice of the peace has once taken an oath, it is not necessary for him or her to take an oath or make an affirmation for the purpose of a subsequent appointment.

**8 Termination, &c.**

- (1) The Administrator may, by notice in the *Gazette*, terminate the appointment of a person as a justice of the peace.
- (2) A person whose appointment is terminated ceases to be a justice of the peace on the day specified in the notice published under subsection (1).
- (3) A justice of the peace may, at any time, resign from the office of justice of the peace by writing addressed to the clerk of the peace.

**9 Vacation of office**

Subject to section 6, a person ceases to hold office as a justice of the peace if:

- (a) in accordance with section 8(1), the Administrator terminates the appointment;
- (b) he or she has resigned under section 8(3);
- (c) the appointment was subject to a condition and the condition ceases to be fulfilled; or
- (d) the appointment was for a specified period which has expired.

**10 Protection of justices of the peace**

A justice of the peace has, in the performance of his or her judicial duties as a justice of the peace, the same protection and immunity as a Local Court Judge has in the performance of his or her duties as a Local Court Judge.

**11 Authority of justices of the peace**

- (1) A justice of the peace is entitled to use the title "Justice of the Peace" or "JP".
- (2) A justice of the peace may exercise any power conferred on a justice of the peace by the common law or this or any other Act, including an Act of the Commonwealth, a State or Territory of the Commonwealth or another country (whether enacted before or after the commencement of this Act).
- (3) A justice of the peace may:
  - (a) administer an oath; and
  - (b) witness an affidavit; and
  - (c) for the purpose of a law in force in the Territory, attest the execution of a document.

**12 References to justices of the peace**

Where by, under or for the purposes of a law in force in the Territory a power is conferred on, or a function or duty may be performed by, a justice of the peace, that power may be exercised, or the function or duty may be performed, outside the Territory by a person who is a justice of the peace, or a judge for the place in which it is exercised or performed.

**13 Clerk of the peace**

- (1) The Departmental Head of the department primarily responsible for the administration of this Act shall appoint a person to be the clerk of the peace.
- (2) The clerk of the peace shall maintain a roll of justices of the peace.
- (3) Within 28 days after changing his or her address, a justice of the peace shall, in writing, notify the clerk of the peace of the change of address and the clerk of the peace shall amend the roll accordingly.

**14 Transitional**

- (1) An appointment of a person as a justice of the peace:
  - (a) under section 10(1) of the *Justices Act*; or
  - (b) under section 10(3) of that Act, that is continued in force under section 6 of the *Transfer of Powers (Further Provisions) Act*,  
  
that is in force immediately before the commencement of this Act continues in force as if the appointment was made under this Act and expressed to be for a period of 5 years after that commencement.
- (2) An appointment under section 10(1) of the *Justices Act* of a person that is subject to a condition under section 10(3) of that Act in force immediately before the commencement of this Act continues in force, subject to the conditions expressed in the appointment, as if the appointment was made under this Act.
- (3) A reference to a justice of the peace (however described) shall be read as a reference to a justice of the peace appointed or holding office as a justice of the peace under this Act.
- (4) Where a justice of the peace has taken an oath or made an affirmation of office required under a provision repealed by this Act, it is not necessary for him or her to take an oath or make an affirmation for the purpose of section 7 of this Act.

## **Schedule 1**

section 6

Supreme Court Judge

Master of the Supreme Court

Registrar of the Supreme Court

Local Court Judge

Registrar of the Local Court

Judicial Registrar or Registrar of the Family Court of Australia

Mayor of a municipality

## Schedule 2

section 7

### OATH

I, \_\_\_\_\_, [*promise/swear etc. as required by Oaths, Affidavits and Declarations Act*] that I will well and truly serve her Majesty, Queen Elizabeth the Second, Her heirs and successors, in the office of justice of the peace and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. [*So help me God! or as appropriate*]

## ENDNOTES

## 1 KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

## 2 LIST OF LEGISLATION

***Justices of the Peace Act 1991 (Act No. 42, 1991)***

Assent date 26 September 1991  
 Commenced 1 January 1992 (*Gaz* G50, 18 December 1991, p 3)

***Statute Law Revision Act 1993 (Act No. 6, 1993)***

Assent date 18 March 1993  
 Commenced 18 March 1993

***Statute Law Revision Act 1997 (Act No. 17, 1997)***

Assent date 11 April 1997  
 Commenced 1 May 1997 (*Gaz* G17, 30 April 1997, p 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date 6 April 2016  
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

## 3 LIST OF AMENDMENTS

s 7 amd No. 17, 1997, s 13; No. 40, 2010, s 118  
 s 11 amd No. 40, 2010, s 118  
 sch 1 amd No. 6, 1993, s 8; No. 8, 2016, s 45  
 sch 2 amd No. 40, 2010, s 118

**Attachment C**

Rule 43.01

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT

No. of 20  
( )

BETWEEN:

Plaintiff

AND:

Defendant

**AFFIDAVIT**

DEPONENT:

:

I, of , being duly sworn MAKE OATH AND SAY as follows:-

1.

---

THIS is PAGE # of the Affidavit of

this .

.....

Deponent

.....

Witness

Northern Territory Justice of the Peace Handbook

I know the facts deposed to herein of my own knowledge except where otherwise appears.

I make this affidavit in the presence of an authorised witness at Darwin in the Northern Territory of Australia, this day of 20\*\*.

) .....

) Deponent

BEFORE ME:

)

.....

Commissioner for Oaths

.....

Name

.....

Telephone

THIS AFFIDAVIT is filed by the SOLICITOR FOR THE NORTHERN TERRITORY, 1<sup>st</sup> Floor, Old Admiralty Towers, 68 The Esplanade, DARWIN NT 0800. Ph: (08) 8935 7848, Fax: (08) 8935 7857. Solicitor for the.



IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT

No. of 20  
( )

BETWEEN:

Plaintiff

AND:

Defendant

This is the annexure marked with the  
letter “”  
referred to in the Affidavit of

\*Sworn/Affirmed before me at Darwin on .....

*\*Delete not applicable – Sworn or Affirmed*

.....  
Commissioner for Oaths

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

AT

No. of 20

()

BETWEEN:

Plaintiff

AND:

Defendant

---

**AFFIDAVIT**

---

SOLICITOR FOR THE  
NORTHERN TERRITORY  
1st Floor, Old Admiralty Towers  
68 The Esplanade  
DARWIN NT 0800

Tel: (08) 8935 7848

Fax: (08) 8935 7857

Solicitor for the

Ref:

## Northern Territory Legislation Permitting Issue of Search Warrants

1. *Animal Welfare Act*  
s.64 – Search warrants
2. *Building Act*  
s.163 – Access to residential premises
3. *Commercial Passenger (Road) Transport Act*  
s.65 – Inspection of premises. Warrant required where there is no consent of owner.
4. *Consumer Affairs and Fair Trading Act*  
s.20(3) – Authorised officer to apply to a justice
5. *Co-operatives Act*  
s.394 – Search warrants
6. *Criminal Investigation (Extra-Territorial Offences) Act*  
s.4 – Issue of Search Warrants by Local Court Judge  
s.5 – Certain warrants not invalidated by misdescription  
s.6 – Authority conferred by and other incidents of search warrant
7. *Criminal Investigation (Extra-Territorial Offences) Regulations*  
Reg 3(1) – where application for search warrant made personally, warrant in accordance with Form 1 in Schedule  
Reg 3(2) – where application for search warrant made over telephone, warrant in accordance with Form 2 in the Schedule  
Reg 4 – Notice of Seizure, Form 3 in the Schedule
8. *Criminal Property Forfeiture Act*  
s.34 – Search Warrants
9. *Criminal Property Forfeiture Regulations*  
Reg 4(2) – An application for a search warrant issued under s.34 to be in accordance with Form 2 in schedule 3.  
Reg 4(3) – Search warrant under s.34 in accordance with Form 3, schedule 3.
10. *Electoral Act*  
s.219 – authorised officer may apply to a Local Court Judge for a search warrant
11. *Gaming Control Act*  
s.68 – Powers of Inspectors/Police to search
12. *Gaming Machine Act*  
s.162(7) and (9) warrant to enter premises
13. *Health and Community Services Complaints Act*  
s.58 – Commissioner may apply to a Justice for a search warrant
14. *Health Practitioners Act*  
s.72 – warrant to enter premises
15. *Local Government Act*  
s.116 – power to enter land or premises
16. *Marine Pollution Act*  
s.61 – warrant to enter residential premises

17. *Petroleum (Submerged Lands) Act*  
s.137D – Local Court Judges to issue search warrants
18. *Planning Act*  
s.77(3) – Justice may issue a search warrant to a member of the Police Force or an authorised member  
s.77(4) – Section 120B(4) to (8), inclusive, of the *Police Administration Act* apply to and in relation to a search warrant issued under subsection (3)
19. *Police Administration Act* (see Appendix 2)  
s.117 – Search warrants  
s.118 – Search warrants issued by telephone  
s.119 – Searches and Emergencies – without authority of a warrant s.120B – Search warrants – dangerous drugs  
s.120C – Searching without warrants s.120D – Use of reasonable force s.120E – Search of females
20. Public Health (Nuisance Prevention) Regulations reg.5 – power to enter premises
21. *Rail Safety Act*  
s.86 – Search warrants
22. *Summary Offences Act*  
s.62 – Search warrants for property improperly taken or stolen
23. *Swimming Pool Safety Act*  
s.44 – Authority or Pool Safety Advisor may apply to a Justice for a search warrant in relation to premises
24. *Totalisator Licensing and Regulation Act*  
s.58 – Search warrants
25. *Waste Management and Pollution Control Act*  
s.73(2) – (7) Application by an authorised officer to a Justice

**NT Police Search Warrant form – Person – Section 117(1)**

**Northern Territory of Australia Police Administration Act,**

**Section 117(1) SEARCH WARRANT**

**TO SEARCH A PERSON**

TO: \_\_\_\_\_, a member of the Police Force:

**WHEREAS I,** \_\_\_\_\_, a Justice within the meaning of the *Police Administration Act*, pursuant to Section 117(1) of that Act, being satisfied by information on **oath** placed before me on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, that there are reasonable grounds for believing that anything connected with an offence may be concealed on the person of, in the clothing that is being worn by or in any property in the immediate control of, a person named:

•

This being a thing related to or in connection with an offence against a law in force in the Northern Territory.

**AUTHORISE YOU**, with such assistance as you think necessary to search the person of, the clothing that is being worn by or property in the immediate control of, the person and seize any such thing that he may find in the course of the search.

This Warrant expires in 14 days on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ unless sooner executed or application made to withdraw.

Signed  
**JUSTICE OF THE PEACE**  
**Northern Territory of Australia**

DATED the \_\_\_\_ day of \_\_\_\_\_, 20

**Northern Territory of Australia Police Administration Act, Section**

**117(1) INFORMATION FOR A SEARCH WARRANT**

**TO SEARCH A PERSON**

I, \_\_\_\_\_, a member of the Police Force, in pursuance of section 117(1) of the *Police Administration Act* make oath and say that I have reasonable ground for believing that there is\*:

\*Concealed on the person of, in the clothing that is being worn by, or in the property in the immediate control of

the following thing:

being a thing: related to, or connected with, an offence against a law in force in the Northern Territory, namely an offence of:

and the reasonable grounds upon which I rely are:

Upon the above reasonable grounds I ask that a Search warrant be issued to enter into or upon and search the person; the clothing that is worn by; and the property in the immediate control of \_\_\_\_\_ for the said thing and to seize the said thing that are found in the course of the search.

SIGNATURE \_\_\_\_\_

Made before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

Signed \_\_\_\_\_

**JUSTICE OF THE PEACE**

**CERTIFICATE OF JUSTICE**

Pursuant to section 117(4) of the *Police Administration Act*, I certify that the reasonable grounds stated above are the grounds I relied upon to justify issuing a Warrant.

Signed \_\_\_\_\_

**JUSTICE OF THE PEACE**

**Search Warrant form – Place – Section 117(2)**

**Northern Territory of Australia Police Administration Act,**

**Section 117(2) SEARCH WARRANT**

**TO SEARCH A PLACE**

**TO:** \_\_\_\_\_, a member of the Police Force:

**WHEREAS I,** \_\_\_\_\_, a Justice within the meaning of the *Police Administration Act*, pursuant to section 117(2) of that Act, being satisfied by information on **oath** placed before me on the \_\_\_ day of \_\_\_\_\_ 20\_\_, that there are reasonable grounds for believing that there is a place described as:

•

the following thing:

•

being a thing related to or in connection with an offence against a law in force in the Northern Territory, namely an offence of:

(Offence)

**AUTHORISE YOU**, with such assistance as you think necessary to enter and search the place and seize anything relating to an offence found in the course of the search at the place.

This Warrant expires in 14 days on the \_\_\_ day of \_\_\_\_\_, 20\_\_ unless sooner executed.

Signed

**JUSTICE OF THE PEACE**  
**Northern Territory of Australia**

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Northern Territory of Australia Police Administration Act, Section 117(2)  
INFORMATION FOR A SEARCH WARRANT**

**TO SEARCH A PLACE**

I, \_\_\_\_\_, a member of the Police Force, in pursuance of section 117(2) of the *Police Administration Act* make oath and say that I have reasonable ground for believing that there is at a place, described as:

the following thing:

being a thing: related to, or connected with, an offence against a law in force in the Northern Territory, namely an offence of:

and the reasonable grounds upon which I rely are:

Upon the above reasonable grounds I ask that a Search warrant be issued to enter and search the place described above for the said thing and to seize the said thing that is found at the place.

SIGNATURE \_\_\_\_\_

Made before me at                      this                      day of , 20\_\_\_\_\_

Signed \_\_\_\_\_

**JUSTICE OF THE PEACE**

**CERTIFICATE OF JUSTICE**

Pursuant to section 117(4) of the *Police Administration Act*, I certify that the reasonable grounds stated above are the grounds I relied upon to justify issuing a Warrant.

Signed \_\_\_\_\_

**JUSTICE OF THE PEACE**



**Search Warrant Form – Drugs – Section**

**120B NORTHERN TERRITORY OF AUSTRALIA**

**Section 120B Police Administration Act**

**SEARCH WARRANT**

TO, \_\_\_\_\_, a member of the Police Force of the

Northern Territory: WHEREAS on application on oath pursuant to s 120B

*Police Administration Act* in relation to

\* a place at: \_\_\_\_\_  
*identify place*

\* aircraft / vehicle / ship: \_\_\_\_\_  
*identify aircraft / vehicle / ship*

\* a person: \_\_\_\_\_  
*name or identify person*

\* property namely \_\_\_\_\_  
*Identify property*

in the immediate control of a person named \_\_\_\_\_ / or identified  
\_\_\_\_\_

I, \_\_\_\_\_ am satisfied  
that there are  
*(full name of Justice)*

reasonable grounds for believing that there is / will be within 72 hours \* on or in that  
place / aircraft / vehicle / ship \* or on that person\* or on or in the property in the  
immediate control of that person \* a dangerous drug \*, precursor \* or drug  
manufacturing equipment \*

YOU ARE HEREBY AUTHORISED, with such assistance as you think  
necessary, to search

(a) that place / aircraft /  
vehicle / ship \*

(b) any person found on or in that place / aircraft /  
vehicle / ship \*

(c) any person who enters the place, aircraft / vehicle / ship\* while the  
search is in progress; (d) the person named \_\_\_\_\_ /  
identified \_\_\_\_\_ \*

(e) the clothing worn by a person referred to in paragraphs  
(b) or (c) or (d)

(f) the property in the immediate control of a person referred to in  
paragraphs (b) (c) or (d)

The authority granted by this warrant expires at \_\_\_\_\_am/pm\* on

20

(A warrant issued under this section shall remain in force for such period as the Justice issuing it specifies in the warrant).

Issued at \_\_\_\_\_ am/pm\* on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ Issued at Darwin

DATED the \_\_\_\_\_ day of  
20

Signed \_\_\_\_\_

Name \_\_\_\_\_ **JUSTICE OF THE PEACE Northern Territory of Australia**

Attachment E

**Arrest Warrant Form Section 121(1)**

**Northern Territory of Australia *Police Administration Act*, Section 121(1)**

**WARRANT TO ARREST A PERSON**

TO: \_\_\_\_\_, a member of the Police Force:-

WHEREAS I, \_\_\_\_\_, a Justice within the meaning of the *Police Administration Act*, pursuant to Section 121(1) of that Act, being satisfied by information on oath placed before me on the <date> day of <month> 20\_\_\_\_, that there are reasonable grounds for believing that:-

**<Suspect's Name and DOB>**

Did <offence> at Darwin in the Northern Territory.

Being an offence against a law in force in the Northern Territory, namely an offence of <offence name>, under section <section number> of the <name of Act>.

**AUTHORISE YOU**, with such assistance, as you think necessary.

\* To arrest <suspect's name> and bring him before the Darwin Court of Summary Jurisdiction to be further dealt with according to law.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20

Signed \_\_\_\_\_

**JUSTICE OF THE PEACE**

**Northern Territory of Australia**

***Police Administration Act, Section 121(1)***

**INFORMATION FOR A WARRANT TO ARREST A PERSON**

I, *<Rank and Name of Member>*, a member of the Police Force, in pursuance of Section 121(1) of the *Police Administration Act* make oath and say that I have reasonable ground for believing that:

*<Suspect's Name and DOB>*

Did *<Offence Name>* at Darwin in the Northern Territory and the reasonable grounds upon which I rely are:

Upon the above reasonable grounds I ask that an Arrest Warrant be issued.

SIGNATURE \_\_\_\_\_

Made before me at Darwin this      day of      , 20\_\_\_\_.

Signed \_\_\_\_\_  
**JUSTICE OF THE PEACE**

**CERTIFICATE OF JUSTICE**

Pursuant to Section 121(3) of the *Police Administration Act*, I certify that the reasonable grounds stated above are the grounds I relied upon to justify issuing a Warrant.

Signed \_\_\_\_\_  
**JUSTICE OF THE PEACE**