



Notes for the Guidance

of

Northern Territory

Commissioners for Oaths

**Notes for the Guidance
of
COMMISSIONERS for OATHS**

on their

Powers, Duties and Responsibilities

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1. APPOINTMENT

A person becomes a Commissioner for Oaths under the *Oaths, Affidavits and Declarations Act* (the Act):

- a) by virtue of holding one of the following offices or positions (“*ex officio*” Commissioner for Oaths):
 - member of the Legislative Assembly;
 - member of either house of the Parliament of the Commonwealth elected to represent the Territory or a constituency in the Territory;
 - legal practitioner; and
 - a police officer.

or

- b) by appointment by the Minister for the period specified in the appointment, not exceeding 5 years.

Appointed Commissioners are issued with a certificate of appointment, which indicates when the term of appointment expires. An application for renewal will be sent to such a Commissioner two months prior to the expiry date. This does not, of course, indicate that an existing Commissioner for Oaths will automatically be re-appointed.

An appointed Commissioner ***must*** notify the Northern Territory Department of the Attorney-General and Justice if he or she changes his or her name, residential or business address or phone numbers. Failure to do so may result in ***cancellation of appointment***.

The Act does not authorise the exercise of a Commissioner’s powers outside the Northern Territory. If a Commissioner no longer resides within the Northern Territory, they should send a request for cancellation of their appointment in writing to the Northern Territory Department of the Attorney-General and Justice.

2. TERMS USED

The “**Act**” is the *Oaths, Affidavits and Declarations Act*.

An “**affidavit**” is a written statement signed by the person (deponent) making the statement, and confirmed by oath.

To “**attest**” is to bear witness to a fact, and a person who signs his or her name as witness to the signing of a document is said to attest it, ie the person represents that he or she saw it signed and that, if later the due execution of the document should be disputed, he or she will be able to give evidence in court of the circumstances in which the person attests.

A “**Commissioner**” is a person appointed as, or by virtue of holding another office is, a commissioner for oaths under section 23 of the *Oaths, Affidavits and Declarations Act*.

The “**deponent**” is the person who makes an affidavit under oath.

A “**jurat**” is a clause at the end of the affidavit which contains the time and place of execution and signatures of the deponent and witness.

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:

- (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*].

3. POWERS

Section 24 of the Act provides -

- (1) A commissioner for oaths may do any of the following for a law of the Territory:
 - (a) administer an oath;
 - (b) witness an affidavit;
 - (c) attest the execution of any other document.

- (2) After attesting the execution of a document, a commissioner for oaths must:
 - (a) sign the document; and
 - (b) write his or her:
 - (i) full name; and
 - (ii) qualification as a commissioner for oaths; and
 - (iii) address or telephone number.

A commissioner for oaths can legibly write, type or stamp their full name, title of Commissioner for Oaths and contact address or telephone number, below their own signature.

It is important in exercising the powers of a commissioner for oaths to avoid any situation which may give rise to a suggestion that a personal interest has conflicted with those powers. A Commissioner should refuse to exercise a power where there is, or it could be perceived that there is, a conflict of interest. For example, witnessing a document for a family member or where that activity may confer, or have the effect of conferring, on the Commissioner (or the Commissioner's employer) a direct or indirect benefit by way of the abandonment of a legal right or interest to which the person making the oath or affidavit or attesting the execution of the instrument would otherwise be entitled.

4. WITNESS'S TESTIMONY - ADMINISTERING AN OATH

A Commissioner for Oaths will not normally be asked to administer an oath for the purpose of taking testimony from a witness in a proceeding before a court or other body entitled to take evidence on oath. However, the usual forms of oath are included below for information.

(a) Usual form of Oath

Section 5 of the Act provides that the form of the oath, under a law in force in the 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*].

There is no longer a form of affirmation. A person who chooses not to take a religious form of the oath, promises to tell the truth.

Where the oath is taken by a person:

- (a) who is in court, the presiding judicial officer of the court (ie judge or magistrate - or if that is not reasonably practicable, a person authorised by the presiding officer to do so) must administer the oath (section 7(1)(a) of the Act), after asking the witness to choose their preferred form of oath, according to their preference eg
 - “Do you promise to tell the truth to this court?”
The witness gives an unconditional affirmative answer such as “I do”.
 - “Do you swear by Almighty God [*or a deity recognised by the person's religion*] to tell the truth to this court? So help you God! [*or as appropriate*]”.
The witness gives an unconditional affirmative answer, which may be “So help me God! [*or as appropriate*]”.
- (b) who is before a tribunal, any sitting member of the tribunal must administer the oath (section 7(1)(b) of the Act), after asking the witness to choose their preferred form of oath, according to their preference ie
 - “Do you promise to tell the truth to this tribunal?”
The witness gives an unconditional affirmative answer such as “I do”.
 - “Do you swear by Almighty God [*or a deity recognised by the person's religion*] to tell the truth to this tribunal? So help you God! [*or as appropriate*]”.
The witness gives an unconditional affirmative answer, which may be “So help me God! [*or as appropriate*]”.

(b) Other forms of Oaths

Instead of making a Christian religious oath, a person may wish to make an oath in one of the following forms -

- . Buddhist oath
- . Chinese oath
- . Jewish oath
- . Muslim oath

For information on the appropriate form of such oaths, the Commissioner should contact –

- . the Supreme Court, or
- . the nearest Police Station.

The Act also provides that:

- other Acts may provide for form and administration of oath (section 10 of the Act); and
- a person taking an oath may take the oath in any form, or have it administered in any way that person wants, if the person administering the oath is satisfied that 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 (section 11 of the Act).

5. WITNESSING AFFIDAVITS/ATTESTING DOCUMENTS

(a) Attesting a document

The objects of attesting, by witnessing, a document are 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 a lack of understanding; or
 - duress or undue influence.
- (1) Commissioners should inform themselves generally of the nature of the document which is being attested. They should not witness a signature to a document which has been left blank to be filled in or completed later or which contains illegible material.
 - (2) Except in the case of persons unable to read, including the blind, Commissioners are not required, nor indeed entitled, to read through a document in detail. However, common prudence demands that they obtain sufficient knowledge of it to understand its general nature so that they will be aware of what type of document they are being asked to attest. Furthermore, a prudent Commissioner would ask a person about to make an oath whether he/she has read through the document and understands its contents. A document should also be examined for the purpose of seeing whether there are any erasures, alterations or interlineations requiring initialling.
 - (3) Before attesting a signature, a Commissioner should be satisfied that the person signing is of sound mind, is acting freely and voluntarily, and either understands the contents of the document or indicates that he/she wants his/her signature attested without further inquiry or explanation from the Commissioner.
 - (4) A Commissioner should also take note of circumstances such as youth, disability or a reasonable possibility of duress or undue influence, which should put a Commissioner on inquiry before he or she signs as attesting witness.
 - (5) If the person signing the document asks the Commissioner to read the contents of the whole or part of the document, the Commissioner should do so.
 - (6) In all cases, the attesting Commissioner should be independent of the parties to the document and have no interest in it. The value of a Commissioner's evidence may be weakened by proof of his/her interest.

- (7) After seeing the person sign the document, a Commissioner should personally sign her or his name where indicated, indicating the place and date of execution. The signature should **not** be stamped.
- (8) To facilitate proof of attesting a document, Commissioners witnessing a signature **must** legibly write, type or stamp beneath their signature -
 - (a) their full name;
 - (b) their qualification as a commissioner for oaths; and
 - (c) their contact address or telephone number.

(b) Administering an Oath

Section 5 of the Act provides that the form of the oath, under a law in force in the 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*].

If an oath is to be taken by a person who is not in court or before a tribunal, a justice of the peace or a commissioner for oaths can administer the oath (section 7(1)(c) of the Act).

The Commissioner when 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 (section 5(2) of the Act).

It is not necessary for a religious text to be used in taking a religious oath (section 12(1) of the Act) for example if it is not available.

There is no longer a form of affirmation. A person who chooses not to take a religious form of the oath, promises to tell the truth. A person is taken to have chosen the promise form of the oath if that person:

- (a) refuses to make a choice; or
- (b) indicates he or she does not have a preference; or
- (c) the Commissioner is satisfied it is not reasonably practicable for the person to take an oath in his or her chosen form.

(section 5(3) of the Act).

The Act also provides that:

- other Acts may provide for the form and administration of an oath (section 10 of the Act); and

- a person taking an oath may take the oath in any form, or have it administered in any way, that person wants if the person administering the oath is satisfied that 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 (section 11 of the Act).

(c) Witnessing an affidavit

(Refer to Part 3 of the Act regarding affidavits)

When witnessing an affidavit, the Commissioner, after the deponent has chosen his/her preferred form of oath, administers that oath accordingly, by requiring the deponent, in the presence of the Commissioner, to say the following words of the oath aloud, either by repeating them after the Commissioner or by reading them (sections 9 and 14(5)(d) of the Act):

- “I promise that I am the person named as the maker of this affidavit, that the contents of this affidavit are true, that the signature is mine and (if necessary) that this attachment / exhibit is the attachment / exhibit 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 this affidavit, that the contents of this 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]*”

The oath having been administered, the jurat is completed. The jurat must set out (section 14(3) of the Act):

- (a) that the affidavit is made by the person making it in the presence of an authorised witness; and
- (b) the place where, and the date when, the affidavit is made.

When witnessing an affidavit, the Commissioner does **not** need to see the deponent sign the affidavit (section 14(5) of the Act) but the deponent must say on oath that the signature is his/hers.

Examples of jurats are as follows:

Made by [full name of deponent] in the presence of an authorised witness at
 ...[place].....on..[date]...
[signature of deponent]
 In the presence of / Witnessed by:

[signature of witness]
 [qualification as an authorised witness ie Commissioner for Oaths]
 [Full name of Commissioner for Oaths]
 [Address or telephone number of Commissioner for Oaths]

OR:

Made at]	
in the Northern Territory]	
by (deponent).....]	Signature of deponent
thisday of 20...]	
In the presence of:]	
(Signature of witness)]	
.....]	
Commissioner for Oaths]	
(name written legibly, typed or stamped)]	
(contact address/phone number)]	

Each page of the affidavit must be signed by both the Commissioner and the deponent (section 14(5)(b) and (6)(b) of the Act).

(d) Person unable to read

(Refer Local Court Rule 22.04; Supreme Court Rule 43.02; Work Health Court Rule 17.03)

In the case of a deponent who is unable to read (eg illiterate or blind), the affidavit must first be read to that person, and the deponent then asked if he/she understands and adopts its contents. If the deponent says "Yes", then the deponent can sign his/her signature (if the person is able to sign) or, if physically able to write but unable to sign his/her name, he/she fixes his/her mark, with a pen, in the proper place.

For example:

JOHN JONES BY HIS MARK: X

The Commissioner must add, in or below the jurat, the following words :-

"This affidavit has been first read to (John Jones) in my presence, who appeared to me perfectly to understand it, and fixed (his) signature (or mark) in my presence,, Commissioner for Oaths."

(e) Person physically unable to write

(Refer Local Court Rule 22.05; Work Health Court Rule 17.04)

Where a person making an affidavit is physically unable to sign his/her name or make a mark, the jurat should be completed as follows :-

"Made by [full name of deponent] in the presence of an authorised witness at in the Northern Territory on this day of 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 understand the affidavit.

In the presence of / Witnessed by:

[signature of witness]

[qualification as authorised witness ie Commissioner for Oaths]

[Full name of Commissioner for Oaths]

[Address or telephone number of Commissioner for Oaths]

(f) Person unable to understand English

(Refer Local Court Rule 22.06; Work Health Court Rule 17.05)

When an interpreter is to assist in the swearing of an affidavit by a deponent who has little or no knowledge of the English language, the interpreter should take an oath in words to the following effect (Local Court Rule 22.06(1)(a); Work Health Court Rule 17.05(1)(a)):

"I [promise / swear by Almighty God (or as appropriate)] that I understand the English language and the (name other) language, 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]"

The interpreter and/or a person unable to understand English may also choose to make another form of oath.

The Commissioner must certify (Local Court Rule 22.06(1); Work Health Court Rule 17.05(1)), in or below the jurat, to the following effect:

"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 / her name or made a mark in my presence.

..... Commissioner for Oaths."

(g) Child

A person under 18 years may take an oath. However, the Commissioner must be satisfied that the child is capable of understanding the nature of an oath and that he/she must tell the truth in the affidavit. In addition to the matters mentioned above in paragraph (a), the Commissioner should also be satisfied that the child understands the contents of the affidavit.

(h) Errors, Corrections, Alterations

(Refer section 14(5)(c) & (6)(c) of the Act; Local Court Rule 22.10; Supreme Court Rule 43.05; Work Health Court Rule 17.09)

If an error is made in completing the affidavit or there are erasures or interlineations in the affidavit, each error should be corrected and the correction, alteration, erasure or interlineation initialled by both the person making the affidavit and the Commissioner witnessing it. It is preferable that the initialling be done next to the actual alteration.

If any alteration is made in an affidavit after it has been made, it must be re-made.

(i) Attachments, Annexures or Exhibits

(Refer section 14(4) & (6)(d) of the Act; Local Court Rule 22.08; Supreme Court Rule 43.06; Work Health Court Rule 17.07)

Documents attached, annexed or exhibited to an affidavit **must** be signed by the Commissioner and should be identified with the main affidavit by subscribing an identification clause which is usually in this form:

"This is the document marked "A" referred to in the affidavit of
..... (*full name of deponent*) made at
..... in the Northern Territory this
day of 20....., in the presence
of..... (*full name and signature or
initials of witness*), Commissioner for Oaths."

The person making the affidavit (by oath) need not sign an attachment, annexure or exhibit.

(j) Fees

A Commissioner is not entitled to ask for, or accept, a fee for any service provided, such as administering an oath, witnessing an affidavit or attesting any other document.

(k) Interstate documents on oath which a Commissioner may witness

A Commissioner for Oaths may witness an affidavit or other document on oath or affirmation for use in:

- ACT (an oath or affidavit for the purposes of a proceeding or any other purpose);
- NSW (any oath, declaration or affidavit required for the purpose of any court or the registration of any instrument or any arbitration);
- VIC (affidavits for use in court or for any authorised purpose);
- SA (any oath or affidavit required for the purpose of any court or matter in SA);
- TAS (affidavits for use in the Tasmanian Magistrates and Supreme Courts);
- WA (an affidavit for any purpose in WA); and
- QLD (any affidavit)

When witnessing an affidavit for use interstate, the Commissioner for Oaths may add or have added, below the jurat clause, the following:

ACT

"This affidavit is witnessed pursuant to section 11(1)(b)(iv) of the *Oaths and Affirmations Act 1984* (ACT)."

NSW

"This affidavit is witnessed pursuant to section 26(1)(b) of the *Oaths Act 1900* (NSW)."

VIC

"This affidavit is witnessed pursuant to section 124(1)(c) of the *Evidence Act 1958* (Vic)."

SA

"This affidavit is witnessed pursuant to section 66(1)(c) of the *Evidence Act 1929* (SA)."

TAS

"This affidavit is witnessed pursuant to Supreme Court Rule 511(2) of the *Supreme Court Rules 2000* (Tasmania) / rule 62(2) of the *Magistrates Court (Civil Division) Rules 1998*."

WA

"This affidavit is witnessed pursuant to section 9(8)(d) of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA)."

QLD

"This affidavit is witnessed pursuant to section 41(1)(c) of the *Oaths Act 1867* (QLD)."

(1) How to certify true copies

A Commissioner may be asked to authenticate a copy of an original document by indicating that the copy is a true copy of the original document. The Commissioner is to examine and compare the two documents (making sure one of the two documents is the **original**) and write on the copy the following words:

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

OR

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

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

Signed

(Commissioner’s signature)

Commissioner for Oaths

(Print legibly or stamp your full name and contact address or telephone number)

The document should then be signed and dated by the Commissioner for Oaths. Alternatively, a stamp can be used stating the words above.

When certifying documents containing more than one page, it is acceptable for the Commissioner to initial each additional page of the document certified. 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 and the following (insert total number of pages) pages to be a true copy of the original document that it purports to be.”

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

Signed

(Commissioner’s signature)

Commissioner for Oaths

(Print legibly or stamp your full name and contact address or telephone number)

NORTHERN TERRITORY OF AUSTRALIA

OATHS, AFFIDAVITS AND DECLARATIONS ACT

As in force at 1 August 2012

- [*Oaths, Affidavits and Declarations Act*](#)