

(Reprint No. 2)

SOUTH AUSTRALIA

OATHS ACT, 1936

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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OATHS ACT, 1936

being

Oaths Act, 1936, No. 2278 of 1936 [Assented to 3 September 1936]

as amended by

Oaths Act Amendment Act, 1968, No. 24 of 1968 [Assented to 5 December 1968]
Oaths Act Amendment Act, 1969, No. 41 of 1969 [Assented to 13 November 1969]
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]¹
Oaths Act Amendment Act, 1983, No. 53 of 1983 [Assented to 16 June 1983]²
Statutes Amendment (Oaths and Affirmations) Act, 1984, No. 56 of 1984 [Assented to 24 May 1984]³
Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]⁴

An Act to consolidate certain Acts relating to oaths, affirmations, declarations, and attestations.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Oaths Act, 1936*.

Repeal

2. (1) The following Acts are wholly repealed:—
Promissory Oaths Act, 1869—No. 6 of 1869-70.
The Affirmations Act, 1896—No. 671 of 1896.
The Promissory Oaths Amendment Act, 1911—No. 1037 of 1911.
The Declarations and Attestations Act, 1913—No. 1114 of 1913.
The Statutory Declarations Act, 1915—No. 1188 of 1915.

¹Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

²Came into operation 1 July 1983: *Gaz.* 30 June 1983, p. 1760.

³Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.

⁴Came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2047.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

(2) The Act No. 23 of 1872, entitled An Act for increasing the facilities for the taking of acknowledgments of married women, and for other purposes, is repealed with the exception of sections 1 and 6 thereof.

Division of Act

3. This Act is divided into Parts as follows:—

PART I—Preliminary: Sections 1 to 3.

PART II—Promissory oaths and declarations: Sections 4 to 22.

PART III—Statutory declarations: Sections 23 to 27.

PART IV—Commissioners for taking affidavits: Sections 28 to 31.

PART V—Appointment of persons to take declarations and attest documents:
Sections 32 to 36.

PART II
PROMISSORY OATHS AND DECLARATIONS

Interpretation

4. In this Part, unless the contrary intention appears:—

“judicial oath” means the oath prescribed by section 11:

“oath of allegiance” means the oath prescribed by section 8:

“oath of fidelity” means the oath prescribed by section 10:

“official oath” means the oath prescribed by section 9.

Oaths to be taken by the Governor

5. (1) The Governor, as soon as may be after his acceptance of office, shall take the oath of allegiance and the official oath in the presence of the Chief Justice or the Acting Chief Justice of the State.

(2) The Master of the Supreme Court or the associate to the Chief Justice or Acting Chief Justice, as the case may be, shall tender those oaths to the Governor.

Oaths to be taken by members of the Executive Council

6. (1) Every member of the Executive Council, as soon as may be after his acceptance of office, shall take the oath of allegiance, the official oath and the oath of fidelity, in the presence of the Governor in Council.

(2) The Clerk of the Executive Council shall tender those oaths to the members of the Executive Council.

Oaths to be taken by judicial officers

7. (1) Each of the following officers, namely—

(a) the Chief Justice;

(b) the puisne judges of the Supreme Court;

(c) the Masters of the Supreme Court;

(d) the Judges appointed under the *Local and District Criminal Courts Act, 1926-1981*;

(e) the Judge in Insolvency;

(f) the special magistrates;

and

(g) the justices of the peace,

shall, as soon as practicable after his acceptance of office, take the oath of allegiance and the judicial oath.

(2) The oaths to be taken under this section by the Chief Justice or a puisne judge of the Supreme Court shall be tendered by the Clerk of the Executive Council and taken before the Governor in Council.

(3) The oaths to be taken under this section by a Master of the Supreme Court, a Judge appointed under the *Local and District Criminal Courts Act, 1926-1981*, or a Special Magistrate shall be taken before a Judge of the Supreme Court, either in open court or in chambers.

(4) The oaths to be taken under this section by a justice of the peace shall be taken in the manner prescribed by the *Justices of the Peace Act, 1991*.

Form of oath of allegiance

8. The oath of allegiance shall be in the following form:—

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King Edward the Eighth, His Heirs and Successors, according to law. SO HELP ME GOD!

Form of official oath

9. The official oath shall be in the following form:—

I, _____, do swear that I will well and truly serve His Majesty King Edward the Eighth, His Heirs and Successors, according to law, in the office of _____ . SO HELP ME GOD!

Form of oath of fidelity

10. The oath of fidelity shall be in the following form:—

I, being chosen and admitted of His Majesty's Executive Council in the State of South Australia, do swear that I will, to the best of my judgment, and at all times when thereto required, freely give my counsel and advice to the Governor, for the time being, for the good management of the public affairs of the said State; that I will not directly nor indirectly reveal such matters as shall be debated in Council, and committed to my secrecy, but that I will in all things be a true and faithful Councillor. SO HELP ME GOD!

Form of judicial oath

11. The judicial oath shall be in the following form:—

I, _____, do swear that I will well and truly serve Our Sovereign Lord King Edward the Eighth, His Heirs and Successors, according to law, in the office of _____, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill. SO HELP ME GOD!

Use of name of Sovereign for the time being

12. Every reference in any form of oath prescribed by this Part to His Majesty King Edward the Eighth shall be altered from time to time as occasion requires by substituting the name of the Sovereign of the United Kingdom of Great Britain and Northern Ireland for the time being.

Affirmations

Affirmation in lieu of oath

13. Any person may make an affirmation in lieu of taking the oath required by the *Constitution Act, 1934*, or any oath of allegiance, official oath, oath of fidelity, or judicial oath.

Form of affirmation

14. Every affirmation shall commence "I, _____ do truly and solemnly affirm" and shall proceed in the same words as the oath required or permitted by law under the same circumstances, omitting all words of imprecation or calling to witness, and the attestation of any affirmation in writing may be in the same words as the jurat of an affidavit substituting the word "affirmed" for the word "sworn".

Persons entitled to take affirmations

15. Every person authorized to administer an oath shall have authority to take an affirmation.

Penalty on not taking prescribed oath

16. If any person declines or neglects when any oath or affirmation required to be taken by him under this Part is duly tendered, to take such oath or make such affirmation, he shall, if he has already entered on the office in relation to which the oath or affirmation is required vacate that office, and if he has not entered on that office he shall be disqualified from entering on it, but no person shall be compelled in respect of the same appointment to the same office to take an oath or make an affirmation under this Part more than once.

*Abolition of certain Oaths***Prohibition on use of oath of allegiance**

17. Notwithstanding any Act, charter, or custom, no person shall be required or authorized to take the oath of allegiance or any oath substituted for that oath or to make any affirmation or declaration to the like effect of that oath, except in a case where this Part or some other Act of the State expressly so requires.

Substitution of declarations for oaths

18. (1) Where in any case not otherwise provided for by this Part an oath is required to be taken by any person on or as a condition of admission to membership, fellowship, or participation in the privileges of any body corporate, society, or company, or on or as a condition of accepting any employment or office a declaration shall be taken in lieu of that oath to the like effect in all respects as that oath.

(2) A declaration in pursuance of this section shall have the same effect in all respects as the oath for which the declaration is substituted would have had if this Part had not been passed.

Effect of not making declaration as required by this Part

19. If any person required by this Part to make a declaration instead of an oath declines or neglects to make that declaration, he shall be subject to the same penalties and disabilities (if any) as he would have been subject to for declining or neglecting to take the oath for which that declaration is substituted.

Saving of power to alter declaration

20. Where a declaration is substituted for an oath under this Part any person who but for the enactment of this Part would have had power to alter that oath or to substitute another oath in its place, may exercise the like power with regard to the substituted declaration.

*Saving Provisions***Saving**

21. Nothing in this Part shall affect—

- (a) the *Constitution Act, 1934*, or any Act specially requiring any particular form of oath to be taken:
- (b) any oath required or authorized by any Act to be taken or made for the purpose of attesting any fact or verifying any account or document:
- (c) any oath required to be taken by any juror, witness, or other person pursuant to any Act or custom as preliminary to or in the course of any civil, military, criminal, or other trial, or any inquest or proceedings of a judicial nature, any arbitration or any proceedings before a Committee of either House of Parliament, or before any Commissioner, or other special tribunal appointed by the Governor.

Saving of rights dependent upon taking an oath

22. Where but for the enactment of this Part, the taking of any oath would be a condition precedent or subsequent to the attainment by any person of any office, privilege, exemption, or other benefit and that person is by this Act prevented from fulfilling that condition he shall, nevertheless, on complying with any other conditions attached to the attainment of such office, privilege, or other benefit be entitled thereto as if the condition relating to that oath and any direction as to the certificate or registration of the taking of that oath or otherwise had been fulfilled and performed.

PART III

STATUTORY DECLARATIONS

Operation of the Imperial Act, 5 and 6 Wm. 4 c. 62

23. The enactment of this Part shall not affect the operation within the State of the Act of the Imperial Parliament, 5 and 6, William 4, chapter 62 (commonly called the *Statutory Declarations Act, 1835*), except in so far as the provisions of this Part are inconsistent with the provisions of that Act.

Part not to apply to oaths in judicial proceedings

24. This Part does not apply to any oath, affirmation, or affidavit which may be made or taken, or be required to be made or taken, in any judicial proceedings in any court of justice, or in any proceeding for or by way of summary conviction before any justice.

Declaration in lieu of oath

25. It shall be lawful for any justice or notary public, or any officer by law authorized to administer an oath or affirmation, to take the declaration of any person voluntarily making the same before him in the following form:—

I, _____ do solemnly and sincerely declare
that _____ . And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the provisions of the *Oaths Act, 1936*.

Fees on taking of oath

26. Whenever a declaration is made under this Part in lieu of an oath or affirmation, all (if any) such fees as would have been payable if the oath or affirmation had been taken, shall be payable.

False declaration

27. (1) Any person who wilfully makes any declaration by virtue of this Part, knowing that declaration to be untrue in any material particular, shall be guilty of a misdemeanour, and shall be liable, upon conviction thereof, to be imprisoned for any term not exceeding four years, with hard labour.

(2) In any proceedings under this Part in relation to a misdemeanour referred to in subsection (1) of this section where the court is satisfied that the defendant knew that he was required to declare his belief in the truth of the declaration referred to in that subsection it shall not be a defence that the declaration was not duly made or that the declaration was not in the form prescribed by section 25 of this Act.

PART IV

COMMISSIONERS FOR TAKING AFFIDAVITS

Commissioners for taking affidavits

28. (1) The following shall be Commissioners for taking affidavits in the Supreme Court—

- (a) all Judges and Masters of the Supreme Court;
- (b) all District Court Judges;
- (c) all special magistrates;
- (d) all persons on the roll of practitioners of the Supreme Court (except any such person whose right to practise the profession of law is under suspension by virtue of disciplinary action taken against him);

and

- (e) any other persons appointed by the Governor to be Commissioners for taking affidavits in the Supreme Court.

(2) An oath, affirmation or declaration taken or made before a Commissioner shall be as valid and effectual as if it had been taken or made before the Supreme Court.

* * * * *

Improperly taking affidavits, etc.

30. Any person who wilfully takes any affidavit, affirmation, or declaration, not being lawfully authorized to do so, shall be guilty of a misdemeanour, and liable to imprisonment not exceeding one year, or a fine not exceeding two hundred dollars.

Supreme Court to take judicial notice of signatures

31. The Supreme Court and the Judges, Master, and other officers thereof shall take judicial notice of the signature of every person before whom affidavits, declarations, and affirmations are by this Part authorized to be made, if that signature is subscribed to any affidavit, declaration or affirmation taken under this Part.

PART V

APPOINTMENT OF PERSONS TO TAKE DECLARATIONS AND ATTEST DOCUMENTS

Interpretation

32. In this Part—

“bank” means a body corporate authorized under Part II of the *Banking Act 1959* of the Commonwealth, as amended from time to time or any enactment passed in substitution therefor, to carry on banking business in Australia and carrying on banking business in the State and includes the Savings Bank of South Australia and the State Bank of South Australia;

“bank manager” means a person appointed to take charge of the head or any branch office in the State of a bank:

“instrument” means any instrument or document in writing:

“postmaster” means a person appointed to take charge of a post office in the State:

* * * * *

“proclaimed bank manager”, “proclaimed postmaster” and “proclaimed member of the police force” mean respectively a bank manager, postmaster or member of the police force appointed by the Governor by proclamation under this Part.

Appointment of persons to take declarations and attest instruments

33. (1) The Governor may, by proclamation, appoint such postmasters, bank managers, and members of the police force of the State as he deems proper to take declarations and attest the execution of instruments pursuant to this Part.

(2) The appointment of any person under this section shall be terminated by—

(a) his death;

(b) his ceasing to be a postmaster, bank manager, or member of the said police force (according to the nature of the qualification by virtue of which he was appointed); or

(c) the revocation of his appointment by the Governor by proclamation.

(3) Every proclamation made under this section, and notice of the termination by any means other than proclamation of any appointment made under this section, shall be published in the *Government Gazette*.

(4) Every person appointed or purporting to have been appointed a proclaimed bank manager prior to the commencement of the *Oaths Act Amendment Act, 1968*, shall be deemed to have been validly appointed.

Who may take declarations and attest instruments

34. Whenever by or under any Act it is provided—

(a) that any declaration shall or may be made before a justice or before a justice or some other person or authority; or

(b) that any instrument shall or may be signed or executed in the presence of, or be attested by, a justice or by a justice or some other person or authority,

that provision shall be deemed to be complied with if the declaration is made before, or the instrument is signed or executed in the presence of or attested by (as the case may require), either—

I. a justice for the State, or, if the particular Act so permits, for any other State or country, or such other person or authority; or

- II. any proclaimed postmaster; or
- III. any proclaimed bank manager; or
- IV. any proclaimed member of the police force of the State:

Provided that, if the declaration is made before, or the instrument is signed or executed in the presence of or attested by, a proclaimed postmaster, bank manager, or member of the police force, the name of the town or other place where his office is situated, or he is stationed, is stated on such declaration or instrument in connection with his signature and description.

Meanings of terms in declarations and instruments

35. The words "proclaimed postmaster", or "proclaimed bank manager", or "proclaimed police officer" appearing after any signature in or upon any declaration or instrument shall respectively be taken to mean proclaimed postmaster, or proclaimed bank manager, or proclaimed member of the police force of the State, as defined by this Part, unless a different meaning is indicated in or upon such declaration or instrument.

Act to apply, notwithstanding provisions of any other Act

36. The provisions of this Part shall apply notwithstanding the provisions of *The Real Property Act, 1886*, or any other Act or law.

APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 664.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

| | |
|---------------|---|
| Section 7(1): | substituted by 34, 1981, s. 41(a) |
| Section 7(3): | substituted by 34, 1981, s. 41(b) |
| Section 7(4): | amended by 62, 1993, s. 29 |
| Section 28: | substituted by 53, 1983, s. 3 |
| Section 29: | substituted by 53, 1983, s. 3; repealed by 56, 1984, s. 7 |
| Section 31: | amended by 53, 1983, s. 4 |