

South Australia

OATHS ACT 1936

An Act relating to oaths, affirmations, declarations, and attestations.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

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
State Bank (Corporatisation) Act 1994 No. 17 of 1994 [Assented to 12 May 1994]⁵
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]⁶
Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]⁷
Statutes Amendment (References to Banks) Act 1997 No. 30 of 1997 [Assented to 12 June 1997]⁸
Statutes Amendment (Ministers of the Crown) Act 1997 No. 69 of 1997 [Assented to 11 December 1997]⁹
Statutes Amendment (Attorney-General's Portfolio) Act 1998 No. 59 of 1998 [Assented to 3 September 1998]¹⁰
Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]¹¹
Constitution (Parliamentary Secretaries) Amendment Act 2002 No. 29 of 2002 [Assented to 7 November 2002]
Statute Law Revision Act 2003 No. 44 of 2003 [Assented to 23 October 2003]¹²

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

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

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

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

⁵ Came into operation 1 July 1994: *Gaz.* 23 June 1994, p. 1784.

⁶ Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.

⁷ Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.

⁸ Part 10 (ss. 12-16) came into operation 3 July 1997: *Gaz.* 3 July 1997, p. 4.

⁹ Part 5 (s. 10) came into operation 17 December 1997: *Gaz.* 17 December 1997, p. 1639.

¹⁰ Part 7 (ss. 11-16) came into operation 13 December 1998: *Gaz.* 3 December 1998, p. 1676.

¹¹ Schedule (item 36) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.

¹² **Schedule 1 came into operation 24 November 2003: *Gaz.* 13 November 2003, p. 4048.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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LEGISLATIVE HISTORY**

Oaths Act 1936

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

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

* * * * *

Part 2—Promissory oaths and declarations

Division 1—Oaths

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.

(3) Subsection (1) does not require a person to take the oath of allegiance or the oath of fidelity more than once during the term of any Parliament.

Oaths to be taken by Ministers who are not members of the Executive Council or by Parliamentary Secretary to a Minister

6A. (1) Every Minister of the Crown who is not a member of the Executive Council and any member of Parliament appointed as a Parliamentary Secretary to a Minister must, as soon as is practicable after accepting office, take the oath of allegiance and the official oath before the Governor.

(2) Subsection (1) does not require a person to take the oath of allegiance more than once during the term of any Parliament.

Oaths to be taken by judicial officers

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

(a) the Chief Justice; and

(b) the puisne judges of the Supreme Court; and

(c) the Masters of the Supreme Court; and

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- (d) the Judges appointed under the *Local and District Criminal Courts Act 1926-1981*; and
- (e) the Judge in Insolvency; and
- (f) the special magistrates; and
- (g) the justices of the peace,

shall, before proceeding to discharge any official duties, take the oath of allegiance and the judicial oath.

(2) The oaths to be taken under this section by the Chief Justice must be taken before the Governor or the most senior puisne judge of the Supreme Court that is available at the time that the oath is to be taken, as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the most senior puisne judge of the Supreme Court that is available).

(3) Subject to subsection (3a)—

- (a) the oaths to be taken under this section by the puisne judges of the Supreme Court must be taken before the Governor or the Chief Justice, as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the Chief Justice);
- (b) the oaths to be taken under this section by any other judicial officer to whom this section applies (other than a justice of the peace) must be taken before the Chief Justice.

(3a) If, in accordance with this section, an oath is to be taken before the Chief Justice, that oath may, if the Chief Justice is not available at the time that the oath is to be taken, be taken before the most senior puisne judge of the Supreme Court that is available at that time.

(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*.

(5) This section does not apply to a person appointed to act in a judicial office on an auxiliary basis under the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* if that person has previously taken the oath of allegiance and the judicial oath in accordance with this Act.

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.

Division 2—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 authorised to administer an oath shall have authority to take an affirmation.

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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.

Division 3—Miscellaneous

Prohibition on use of oath of allegiance

17. Notwithstanding any Act, charter, or custom, no person shall be required or authorised 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

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 authorised 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 3—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 authorised 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 an offence, 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 an offence 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 4—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; and
- (b) all District Court Judges; and
- (c) all special magistrates; and
- (ca) all Registrars and Deputy Registrars of the Supreme Court, the District Court, the Environment, Resources and Development Court, the Industrial Relations Court, the Youth Court and the Magistrates Court; and
- (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 authorised to do so, shall be guilty of an offence, 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 authorised to be made, if that signature is subscribed to any affidavit, declaration or affirmation taken under this Part.

Part 5—Appointment of persons to take declarations and attest documents

Interpretation

32. In this Part—

"**instrument**" means any instrument or document in writing;

"**manager**" means a person appointed to be in charge of the head office or a branch office in the State of any ADI;

"**proclaimed manager**" means a manager appointed by the Governor by proclamation under this Part;

"**proclaimed member of the police force**" means a 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 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; or
- (b) his ceasing to be a 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*.

* * * * *

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—

- (c) 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

- (d) any proclaimed manager; or
- (e) 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 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.

Meaning of terms in declarations and instruments

35. The words "proclaimed manager" or "proclaimed police officer" appearing after a signature in a declaration or instrument are to be taken to have the same meaning as defined in this Part unless a different meaning is indicated.

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.

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APPENDIX**LEGISLATIVE HISTORY****Repeals**

The *Oaths Act 1936* repealed the following:

The Affirmations Act 1896
The Declarations and Attestations Act 1913
Promissory Oaths Act 1869
The Promissory Oaths Amendment Act 1911
The Statutory Declarations Act 1915

Amendments

The *Oaths Act 1936* amended the following:

An Act for increasing the facilities for the taking of acknowledgments of married women, and for other purposes (No. 23 of 1872)

Transitional Provisions

(Transitional provision from Statutes Amendment (References to Banks) Act 1997, s. 16)

16. (1) A person who was, immediately before the commencement of this Part, a proclaimed bank manager under section 33 of the principal Act will be taken to have been appointed as a proclaimed manager under that section as amended by this Act.

(2) A reference in an Act or other instrument (whether of a statutory nature or not) to a "proclaimed bank manager" will be taken to be a reference to a "proclaimed manager".

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:

Long title:	amended by 44, 2003, s. 3(1) (Sched. 1)
Section 2:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Section 3:	omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.2003
Part 2 Division 1 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Section 6(3):	inserted by 59, 1998, s. 11
Section 6A(1):	inserted by 69, 1997, s. 10; redesignated as s. 6A(1) by
(previously section 6A)	59, 1998, s. 12; amended by 29, 2002, s. 4
Section 6A(2):	inserted by 59, 1998, s. 12
Section 7(1):	substituted by 34, 1981, s. 41(a); amended by 67, 1996, s. 23(a)
Section 7(2):	substituted by 67, 1996, s. 23(b)
Section 7(3):	substituted by 34, 1981, s. 41(b); 67, 1996, s. 23(b)
Section 7(3a):	inserted by 67, 1996, s. 23(b)
Section 7(4):	amended by 62, 1993, s. 29
Section 7(5):	inserted by 67, 1996, s. 23(c)
Heading preceding section 13:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Part 2 Division 2 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Heading preceding section 17:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Part 2 Division 3 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Heading preceding section 21:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Section 27(1) and (2):	amended by 59, 1994, Sched. 2
Section 28:	substituted by 53, 1983, s. 3
Section 28(1):	amended by 67, 1996, s. 24

Section 29:	substituted by 53, 1983, s. 3; repealed by 56, 1984, s. 7
Section 30:	amended by 59, 1994, Sched. 2
Section 31:	amended by 53, 1983, s. 4
Section 32:	definition of "bank" repealed by 17, 1994, Sched. 4 cl. 7 definition of "bank manager" repealed by 30, 1997, s. 12(a) definition of "manager" inserted by 30, 1997, s. 12(b); amended by 33, 1999, Sched. (item 36) definition of "postmaster" repealed by 59, 1998, s. 13 definition of "proclaimed bank manager", "proclaimed postmaster" and "proclaimed member of the police force" amended by 30, 1997, s. 12(c); repealed by 59, 1998, s. 13 definitions of "proclaimed manager" and "proclaimed member of the police force" inserted by 59, 1998, s. 13
Section 33(1):	amended by 30, 1997, s. 13(a); 59, 1998, s. 14(a)
Section 33(2):	amended by 30, 1997, s. 13(b); 59, 1998, s. 14(b)
Section 33(4):	repealed by 30, 1997, s. 13(c)
Section 34:	amended by 30, 1997, s. 14; 59, 1998, s. 15
Section 34 I - III:	redesignated as s. 34(c)-(e) by 44, 2003, s. 3(1) (Sched. 1)
Section 35:	amended by 30, 1997, s. 15; substituted by 59, 1998, s. 16