

## OATHS ACT, 1936.

No. 2278 of 1936.

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

*[Assented to 3rd September, 1936.]*

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.

### PART I.

#### PRELIMINARY.

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

Short title.

2. (1) The following Acts are wholly repealed :—

Repeal.

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.

(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An Act for increasing the facilities for the taking of acknowledgments of married women, and for other purposes, is repealed with the exception of sections 1 and 6 thereof.

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

Division of Act.

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 I.

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.

## 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.  
6, 1869-70, s. 5, and Schedule.  
Cf. U.K. 31 & 32  
Vict. c. 72, s. 5.

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, 1869-70, ss. 5, 7, and Schedule.  
Cf. U.K. 31 & 32  
Vict. c. 72, s. 5.

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.  
6, 1869-70, s. 6, and Schedule.  
Cf. U.K. 31 & 32  
Vict. c. 72, s. 6.

7. (1) The following officers, namely, the Chief Justice and every puisne judge of the Supreme Court, the Judge in Insolvency, every special magistrate and every justice of the peace shall as soon as may be 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 the Judge in Insolvency or a Special Magistrate shall be taken before a Judge of the Supreme Court, either in open court or in chambers.

When the oath is taken in open court it shall be tendered by the Master of the Supreme Court or the Judge's Associate, and when it is taken in chambers, by the Judge before whom it is taken.

(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 Act, 1921.

**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 oath of allegiance.  
6, 1869-70, s. 2.  
U.K. 31 & 32  
Vict. c. 72, s. 2.

**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 official oath.  
6, 1869-70, s. 3.  
1037, 1911, s. 3.  
U.K. 31 & 32  
Vict. c. 72, s. 3.

**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 oath of fidelity.  
6, 1869-70, s. 8.

**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 !

Form of judicial oath.  
6, 1869-70, s. 4.  
1037, 1911, s. 4.  
U.K. 31 & 32  
Vict. c. 72, s. 4.

## PART II.

Use of name  
of Sovereign  
for the time  
being.

6, 1869-70,  
s. 11.  
1037, 1911,  
s. 5.  
U.K. 31 & 32  
Vict. c. 72,  
s. 10.

**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.

671, 1896, s. 2.  
Cf. U.K.  
31 & 32  
Vict. c. 72,  
s. 11.

**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.

671, 1896, s. 3.

**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.

671, 1896, s. 4.

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

Penalty on  
not taking  
prescribed  
oath.

6, 1869-70,  
s. 9.

**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.

6, 1869-70,  
s. 10.  
Cf. U.K.  
31 & 32  
Vict. c. 72,  
Part II.

**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.

6, 1869-70,  
s. 13, II., III.,  
and IV.  
Cf. U.K.  
31 & 32  
Vict. c. 72,  
Part II.

**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.

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.

Effect of not making declaration as required by this Part.  
6, 1869-70, s. 14.  
U.K. 31 & 32  
Vict. c. 72,  
s. 13.

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 of power to alter declaration.  
6, 1869-70, s. 17.  
U.K. 31 & 32  
Vict. c. 72,  
s. 15.

### *Saving Provisions.*

21. Nothing in this Part shall affect—

Saving.  
Cf. 6, 1869-70,  
s. 16.

(a) the Constitution Act, 1934, or any Act specially requiring any particular form of oath to be taken :

Cf. U.K.  
31 & 32  
Vict. c. 72,  
Part III.

(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.

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.

Saving of rights dependent upon taking an oath.  
6, 1869-70,  
s. 18.

## PART III.

## PART III.

## STATUTORY DECLARATIONS

Operation of the Imperial Act, 5 and 6 Wm. 4 c. 62, 1188, 1915, s. 2 (2).

**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. U.K. 5 and 6 Wm. 4 c. 62, s. 7, 1188, 1915, s. 3.

**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. U.K. 5 and 6 Wm. 4 c. 62, s. 13, 1188, 1915, s. 4.

**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. U.K. 5 and 6 Wm. 4 c. 62, s. 19, 1188, 1915, s. 5.

**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. 787, 1902, s. 2, 1188, 1915, s. 6, U.K. 1 & 2 Geo. 5 c. 6, s. 5, U.K. 23 & 24 Geo. 5 c. 20.

**27.** Any person who wilfully and corruptly 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.

## PART IV.

## PART IV.

## COMMISSIONERS FOR TAKING AFFIDAVITS.

Appointment of Commissioners for affidavits. 23, 1872, s. 2, U.K. 52 & 53 Vict. c. 10, s. 1.

**28.** (1) The Governor may appoint any justice, practitioner of the Supreme Court, or clerk of a local court, to be a Commissioner for taking affidavits in the Supreme Court, and may revoke any such appointment at pleasure.

(2) Every person so appointed shall have all the powers and duties which a Commissioner for taking affidavits has ; and every affidavit, declaration, and affirmation taken by any

such person shall be as valid and effectual as if it had been taken before the Supreme Court: Provided, that where an affidavit, declaration, or affirmation is taken before the clerk of a local court, the signature of the clerk shall be authenticated by the seal of the local court.

**29.** Any person who wilfully swears, declares, or affirms falsely in any affidavit, deposition, affirmation, or declaration, made under this Part or before any person appointed under this Part, shall be guilty of perjury and may be prosecuted accordingly.

Perjury.  
23, 1872, s. 4.

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

Improperly  
taking  
affidavits, &c.  
23, 1872, s. 5.

**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, and of the seal of any local court attached to any such affidavit, declaration, or affirmation.

Supreme  
Court to  
take judicial  
notice of  
signature and  
seals.  
23, 1872, s. 7.  
Cf. U.K.  
52 & 53  
Vict. c. 10,  
s. 6 (2).

## PART V.

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### APPOINTMENT OF PERSONS TO TAKE DECLARATIONS AND ATTEST DOCUMENTS.

**32.** In this Part—

“bank” means any company or firm which is publicly engaged in the State in the ordinary business of banking, and whose charter, letters patent, or deed of co-partnership and settlement has been registered and deposited in the office of the Registrar of Companies, pursuant to the Banking Companies Act, 1935, or any previous Act dealing with the same matter, and includes the Savings Bank of South Australia, and includes the Commonwealth Bank of Australia:

Interpretation.  
1114, 1913, s. 2.

“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 ” means appointed by the Governor by proclamation under this Part.

Appointment  
of persons  
to take  
declarations  
and attest  
instruments.  
1114, 1913,  
s. 3.

**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*.

Who may  
take  
declarations  
and attest  
instruments.  
1114, 1913,  
s. 4.

**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.

**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.

Meanings of  
terms in  
declarations  
and  
instruments.  
1114, 1913,  
s. 5.  
Cf. Act 926,  
1907, s. 6.

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

Act to apply,  
notwith-  
standing  
provisions of  
any other  
Act.  
1114, 1913,  
s. 6.